

VOLUME 1
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1906

No. 615

RALPH BEBBER, PETITIONER,

VS.

NEW YORK.

ON WRIT OF HABEAS CORPUS TO THE COURT OF APPEALS OF NEW YORK

WRIT FOR CERTIORARI FILED SEPTEMBER 10, 1906
CERTIORARI GRANTED DECEMBER 1, 1906

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 615

RALPH BERGER, PETITIONER,

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**IN THE COURT OF APPEALS
STATE OF NEW YORK**

**THE PEOPLE OF THE STATE OF NEW YORK, Respondent,
against**

RALPH BERGER, Defendant-Appellant.

Appendix to Appellant's Brief

[fol. 1]

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION—FIRST DEPARTMENT**

**THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against**

RALPH BERGER, Defendant.

NOTICE OF APPEAL—December 7, 1964

Sirs:

Please Take Notice, that the above named defendant appeals to the Appellate Division of the Supreme Court of the City of New York held in and for the First Department from the judgment convicting him of violation of Section 580 of the New York Penal Law, to wit, conspiracy, rendered in this Court after trial by jury on the 7th day of December, 1964, sentence being that defendant serve a sentence of one year on each of the two counts, such sentences to run concurrently and to be served in the penitentiary.

Please Take Further Notice, that the grounds for taking this appeal are that the said judgment and sentence are contrary to law and against the weight of evidence and authority.

Dated, New York, N. Y., December 7, 1964.

Yours, etc.,

Brower Brill & Gangel, Attorneys for Defendant,
Office & P. O. Address, 165 Broadway, New York,
New York 10006.

[fol. 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
against

RALPH BERGER, Defendant.

INDICTMENT

The Grand Jury of the County of New York, by this indictment, accuse the defendant of the crime of Conspiracy, in violation of Section 580 of the Penal Law, committed as follows:

The defendant Ralph Berger, Harry Steinman and Frank Jacklone and divers other persons, (said defendant and said named conspirators and said divers other persons being hereinafter called the "conspirators"), in the County of New York, from on or about the end of May 1962, continuously up to on or about June 29, 1962, did knowingly, wilfully, wrongfully, unlawfully and corruptly conspire with each other to commit crimes in violation of

Section 378 of the Penal Law, in that the conspirators knowingly, wilfully, wrongfully, unlawfully and corruptly did agree to give, offer and to cause to be given and offered, [fol. 3] a bribe, particularly a sum of money, to a public officer attached to the New York State Liquor Authority with intent to influence him in respect to any act, decision, vote, opinion and other proceeding, in the exercise of the powers and functions which he had or might have had, relating to the issuance of a license by the New York State Liquor Authority to sell liquor at a supper club known as the Tenement.

During the period of the conspiracy and for about a year before, Frank Jacklone, the proprietor of a supper club, known as the Tenement, was attempting to secure a license to sell liquor at said club from the New York State Liquor Authority.

As part of said conspiracy, Frank Jacklone agreed with the defendant, Ralph Berger and co-conspirator Harry Steinman to give to said public officer the sum of \$10,000 to secure a license to sell liquor at the Tenement.

It was the plan of the conspirators that Frank Jacklone would deliver the said sum of ten thousand dollars (\$10,000) to defendant Ralph Berger and his co-conspirator Harry Steinman.

It was further agreed that the defendant Ralph Berger would pay the sum of \$10,000 to the said public officer upon the issuance of the license to sell liquor at the Tenement.

Overt Acts

In furtherance of said conspiracy and to effect the objects thereof, the conspirators, in the County of New York, committed and caused to be committed the following overt acts:

1. In and about the end of May, 1962, the conspirators Frank Jacklone and Harry Steinman met and conferred.

2. In and about the month of June, 1962, the defendant conferred with Frank Jacklone.

[fol. 4] 3. In and about the month of June, 1962, the conspirator Harry Steinman conferred with the defendant.

4. In and about the month of June, 1962, the conspirators Harry Steinman and Frank Jacklone met and conferred.

5. On or about June 21, 1962, Frank Jacklone delivered to the co-conspirator Harry Steinman twenty-five hundred dollars (\$2500).

6. On or about June 25, 1962, the defendant went to a hospital in New York County.

7. On or about June 25, 1962, the defendant met and conferred with a public officer attached to the New York State Liquor Authority.

8. On or about June 25, 1962, the defendant Ralph Berger met and conferred with co-conspirators Harry Steinman and Frank Jacklone.

9. On or about June 28, 1962, Frank Jacklone received a license from the New York State Liquor Authority, to sell liquor at the Tenement.

10. On or about June 29, 1962, the defendant and the conspirator Harry Steinman met and conferred.

11. On or about June 29, 1962, Frank Jacklone delivered seventy-five hundred dollars (\$7,500) to the defendant Ralph Berger.

12. On or about June 29, 1962, the defendant went to a hospital in New York County where he met and conferred with said public officer attached to the New York State Liquor Authority.

Second Count:

And the Grand Jury aforesaid, by this indictment, further accuse the defendant of the crime of Conspiracy, in

violation of Section 580 of the Penal Law, committed as follows:

[fol. 5] The defendant Ralph Berger, Harry Steinman, Arnold Morton and divers other persons (said defendant and said named conspirators and said divers other persons being hereinafter called the "conspirators"), in the County of New York, from on or about July of 1960, continuously up to on or about December 7, 1962, did knowingly, wilfully, wrongfully, unlawfully and corruptly conspire with each other to commit crimes in violation of Section 378 of the Penal Law, in that the conspirators knowingly, wilfully, wrongfully, unlawfully and corruptly did agree to give, offer and to cause to be given and offered, a bribe, particularly a sum of money, to a public officer attached to the New York State Liquor Authority, with intent to influence him in respect to any act, decision, vote, opinion and other proceeding, in the exercise of the powers and functions which he had or might have had, relating to the issuance of a license by the New York State Liquor Authority to sell liquor at the Playboy Club, located at 5 East 59th Street, New York County.

During the fall of 1960, the corporation, Playboy Clubs of New York, Inc. was formed, the stock of which was wholly owned by the parent corporation, Playboy Clubs International, Inc.

During the period of said conspiracy and for some time before, Arnold Morton was vice president and operational director of Playboy Clubs International, Inc., which was planning to establish a Playboy Club in New York County and was attempting to secure a license to sell liquor in said club.

As part of said conspiracy the defendant, Ralph Berger agreed with Arnold Morton, other officers of Playboy Clubs International, Inc. and certain persons to give to said public officer attached to the New York State Liquor Authority the sum of fifty thousand dollars (\$50,000.00) in

order to secure a license to sell liquor at the Playboy Club in New York County.

[fol. 6] It was the plan of the conspirators that the Playboy Clubs International, Inc. would deliver the said sum of fifty thousand dollars (\$50,000.00) to the defendant, Ralph Berger and his co-conspirator, Harry Steinman.

It was further agreed that the defendant, Ralph Berger would pay the said sum of fifty thousand dollars (\$50,000.00) to the said public officer for the issuance of the license to sell liquor at the Playboy Club in New York County.

Overt Acts

In furtherance of said conspiracy and to effect the objects thereof, the conspirators committed and caused to be committed, the following overt acts:

1. During the month of May, 1960, the defendant, Ralph Berger met and conferred with Arnold Morton.

2. During the latter part of the summer of 1960, Arnold Morton met and conferred with the officers of Playboy Clubs International, Inc.

3. During the month of January, 1961, the defendant, Ralph Berger conferred with Arnold Morton in New York County.

4. During the month of January, 1961, the defendant, Ralph Berger and Arnold Morton met, in New York County, a public officer attached to the New York State Liquor Authority.

5. During the month of January, 1961, two officers of Playboy Clubs International, Inc. met and conferred in New York County, with a public officer attached to the New York State Liquor Authority.

6. On or about May 5, 1961, Playboy Clubs International, Inc. delivered a check in the sum of \$5,000 to the defendant Ralph Berger.

[fol. 7] 7. During the month of May, 1961, the defendant, Ralph Berger conferred with Arnold Morton.

8. During the latter part of the spring of 1961, the defendant, Ralph Berger arranged a meeting between a certain attorney in New York County and Arnold Morton.

9. During the latter part of the spring of 1961, the defendant, Ralph Berger and Arnold Morton met and conferred with said attorney in New York County.

10. In the early summer of 1961, Arnold Morton and another officer of Playboy Clubs International, Inc. met and conferred with said attorney in New York County.

11. In the early summer of 1961, said attorney instructed, in New York County, the officers of Playboy Clubs International, Inc. to have the H. M. H. Publishing Company, Inc., the publishers of Playboy magazine, make payment to him on behalf of said Playboy Clubs International, Inc.

12. On or about August 22, 1961, said attorney received from H. M. H. Publishing Company, Inc. a check in the sum of \$10,000 in New York County.

13. On or about August 22, 1961, said H. M. H. Publishing Company, Inc. was reimbursed by International Playboy Clubs, Inc. in the sum of \$10,000.

14. On or about March 15, 1962, said attorney received from said H. M. H. Publishing Company, Inc. a check in the sum of \$8,000.

15. On or about March 14, 1962, said H. M. H. Publishing Company, Inc. was reimbursed by Playboy Clubs International, Inc. in the sum of \$8,000.

16. On or about June 28, 1961, International Playboy Clubs, Inc. delivered to the defendant, Ralph Berger two checks, one payable to Harry Steinman in the sum of [fol. 8] \$12,500 and the other in the sum of \$12,500, payable

to Lee Berco Company, Inc., a corporation controlled by the defendant, Ralph Berger.

17. On or about August 17, 1961, International Playboy Clubs, Inc. delivered a check in the sum of \$5,000 to Ralph Berger.

18. On or about February 5, 1962, Playboy Clubs International, Inc. issued a check in the sum of \$8,000 to Lee Berco, Inc.

19. On or about March 9, 1962, Playboy Clubs International, Inc. issued a check in the sum of \$8,000 to Harry Steinman.

20. On or about February 15, 1962, Playboy Clubs International, Inc., issued a check in the sum of \$3,000 to Lee Berco, Inc.

21. On or about March 9, 1962, Playboy Clubs International, Inc. delivered a check in the sum of \$3,000 to Ralph Berger.

22. During the summer of 1962, said attorney, in the County of New York, arranged a meeting between Arnold Morton and a public officer attached to the New York State Liquor Authority in a hospital in New York County.

23. During the summer of 1962, Arnold Morton met and conferred with said public officer in a hospital in New York County.

24. On or about August 16, 1962, Playboy Clubs International, Inc. issued a check in the sum of \$4,000 to Lee Berco, Inc.

25. On or about November 20, 1961, in the County of New York, an application was filed on behalf of Playboy Clubs of New York Inc. for a restaurant and liquor license with the New York State Liquor Authority.

[fol. 9] 26. On or about December 22, 1961, in the County of New York, said application was granted by the New

York State Liquor Authority and a license was approved subject to certain conditions.

27. On or about December 7, 1962, in the County of New York, a license was issued by the New York State Liquor Authority, authorizing the sale of liquor at the Playboy Clubs of New York, Inc. in New York County.

Frank S. Hogan, District Attorney.

ENDORSEMENTS ON INDICTMENT

No. 140263

THE PEOPLE OF THE STATE OF NEW YORK,

against

RALPH BERGER, Defendant.

Indictment

Conspiracy—580, Penal Law

Frank S. Hogan, District Attorney.

A True Bill.

J. MacDonald Thompson, Foreman.

5

[fol. 15]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NOTICE OF MOTION FOR INSPECTION GRAND JURY MINUTES,
DISMISSAL OF THE INDICTMENT FOR A BILL OF PARTICULARS
FOR AN ORDER STRIKING CERTAIN OVERT ACTS FROM THE
SECOND COUNT OF THE INDICTMENT AND TO SUPPRESS ALL
EVIDENCE OBTAINED BY ILLEGAL WIRETAPS

Sir:

Please Take Notice, that upon the annexed affidavits of Joseph E. Brill and Ralph Berger, both duly sworn to the 7th day of May, 1964, and upon all the proceedings heretofore had herein, the undersigned will move this Court, at a Special and Trial Term, Part 30, to be held at the courthouse, 100 Centre Street, 11th floor, in the Borough of Manhattan, City and State of New York, on the 13th day of May, 1964, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard,

.

[fol. 21]

D

For an order suppressing any and all evidence obtained against the defendant as a result of illegal use of electronic wiretap and eavesdrop instruments and forbidding the use of said evidence at the trial of this case or, in the alternative, for a hearing and judicial review of the validity of all *ex parte* eavesdropping orders made pursuant to Section 813-a of the Code of Criminal Procedure as a result of which any evidence was obtained against the defendant and upon a determination that said *ex parte* wiretap orders were issued contrary to statutory restrictions and in violation of the constitutional rights of privacy under the Fourth Amendment of the Constitution of the United States of America, for a further order suppressing the evidence so illegally obtained and forbidding its use against the defen-

dant on the trial of this case, and for such other, further and different relief as may be just and proper in the premises.

Dated, New York, May 6, 1964.

Yours, etc.,

Joseph E. Brill, Attorney for Defendant, Office &
P. O. Address, 165 Broadway, New York 6, N. Y.

To: Frank S. Hogan, Esq., District Attorney, 155 Leonard Street, New York, N. Y.

[fol. 22]

AFFIDAVIT OF JOSEPH E. BRILL, READ IN SUPPORT OF MOTION

State of New York,
County of New York, ss.:

Joseph E. Brill, being duly sworn, deposes and says:
That he is the attorney for the defendant herein and makes
this affidavit in support of a motion

- 4) For an order suppressing evidence obtained as a result of illegal use of wiretap and eavesdrop instruments and forbidding its use on trial or, in the alternative, for a hearing on the validity of all *ex parte* orders as a result of which evidence was obtained against defendant.

[fol. 31] For an Order Suppressing All Evidence against Defendant Obtained Through Illegal Use of Wiretap and Eavesdrop Instruments

With respect to the demand that an order be made herein suppressing any and all evidence obtained as a result of

illegal use of electronic wiretap and eavesdropping instruments and forbidding the use of said evidence on the trial of this case, it is submitted that the utilization of said electronic devices was effected through invalid orders of this Court issued contrary to statutory requirements and violative of the constitutional rights of the persons whose homes, law offices, business offices and hospital rooms were intruded into and trespassed upon. Defendant further asserts that all the evidence obtained against him as a result of these invalid orders and through the instrumentality of the aforesaid devices bear the ineradicable taint adhering to "fruit of the poisoned tree" and is likewise inadmissible against the defendant.

Upon information and belief, the Grand Jury which returned the indictment against the defendant herein heard tape recordings and/or transcripts of conversations between Harry Neyer, attorney for Frank Jacklone Corporation, and others, which recordings were made by means [fol. 32] of said electronic devices physically secreted in said attorney's law office.

In part, the source of deponent's information and belief concerning the use of said eavesdropping devices is the transcript of the trial of an action in the Supreme Court, New York County, entitled "People of the State of New York against Melvin H. Osterman, Defendant" (Indictment No. 4318-1963). On the colloquy in connection with the motion to suppress any conversations obtained through eavesdropping, the attorney for the defendant in that case read from an affidavit submitted in support of an *ex parte* order which permitted investigators of the District Attorney's office to invade the privacy of a hospital room of an official of the State Liquor Authority with an electronic recording device. Said affidavit made by Jeremiah B. McKenna, Assistant District Attorney of the County of New York, sworn to the 18th day of July, 1962, stated, in part, as follows.

"In the course of this investigation over a duly authorized eavesdropping device installed in the office of

Harry Neyer, one of the attorneys very prominent in the abovementioned conspiracy, evidence has been obtained that one instance where bribe or extortion money has been paid by a liquor license applicant in an attempt to secure a liquor license is that of the Frank Jacklone Corporation, 1046 Second Avenue, City, County and State of New York.

Part of their agreement is to pay \$7,500 through Harry Neyer and other conspirators, namely, Harry Steinman and Ralph Berger, to a public official or officials of the New York State Liquor Authority to secure a liquor license for the aforesaid premises * * *

[fol. 33] During the course of this investigation, on or about June 28, 1962 over a duly authorized eavesdropping device installed in the office of Harry Steinman evidence was obtained that Ralph Berger was going to meet with the aforesaid Martin C. Epstein on or about June 29, 1962 in room 1619 of the New York Hospital, 525 East 68th Street, New York County.

In view of the foregoing, there is reasonable ground to believe that evidence of crime may be obtained by overhearing and recording the conversations, communications and discussions that may take place in Room 1619 at the New York Hospital."

Based on said affidavit and the affidavit of Francis X. Clark, Assistant District Attorney for the County of New York, an *ex parte* order was made on July 19, 1962 by Hon. Joseph A. Sarafite, a Judge of the Court of General Sessions, a copy of which is annexed hereto as Exhibit A. This order authorized the planting of an electronic device in the hospital room of Martin C. Epstein, who, presumptively it is alleged in the indictment herein, the defendant conspired to bribe.

From the affidavit of Martin C. Epstein submitted in an action in the Supreme Court, New York County, entitled

"The People of the State of New York against Martin C. Epstein, Defendant" (Indictment No. 4643-1963), it would appear that not only did the District Attorney cause a listening device to be attached to Martin C. Epstein's hospital room in New York Hospital while he was a patient there in 1962 but wiretap and eavesdropping machines were also placed in his home and law office. Since neither Martin C. Epstein, Harry Neyer or Ralph Berger, the defendant [fol. 34] herein, testified before the Grand Jury and since Harry Steinman denied before the Grand Jury that he helped Jacklone obtain a license or had any dealing with defendant relative to the Jacklone license (See People of the State of New York against Harry Steinman, Indictment No. 1789-1963), it is logical to conclude that the recordings and/or transcripts of the aforesaid wiretaps and eavesdrops were submitted to the Grand Jury and were taken into consideration in its determination to return a true bill against the defendant, Ralph Berger.

It is also reasonable to infer, indeed logic dictates, that any evidence other than tape recordings and/or transcripts offered to the Grand Jury against the said defendant flowed directly from the "leads" provided by these illegal wiretaps and eavesdrops.

A further source of deponent's information relative to the secreting of electronic devices to record conversations both on Harry Neyer's office telephone and in his office proper is the affidavit of Moses L. Kove, Esq., verified the 21st day of April, 1964, submitted in support of a motion by said Harry Neyer in an action in the Supreme Court, New York County, entitled "The People of the State of New York against Harry Neyer, *et al.*, Defendants" (Indictment No. 2479-1963). In said affidavit it is stated that the Grand Jury which returned the indictment against Harry Neyer heard tape recordings and/or transcripts stemming from the installation of electronic devices secreted in his offices and that the source of this information was, in part, the statements of persons called as witnesses before said Grand Jury.

In addition to the making of *ex parte* orders permitting all of the abovementioned wiretaps and eavesdrops to be made, upon information and belief, similar instruments were installed in the office of Harry Steinman, named as a co-conspirator with defendant in both counts of the indictment herein. The source of affiant's information and [fol. 35] belief as to use of wiretaps in the office of Harry Steinman is the aforesaid affidavit of Jeremiah B. McKenna, Assistant District Attorney, sworn to the 18th day of July, 1962.

The Code of Criminal Procedure provides that the Grand Jury can receive none but legal evidence. The said Code also sets forth the grounds upon which an indictment may be set aside and the Court of Appeals has held in unmistakable language that these do not exclude constitutional grounds. Though there is a presumption that the evidence before the Grand Jury was competent and legal, this presumption is overcome upon a showing that the evidence on which the indictment was found was, in fact, illegal. It has been long and well established that on a motion to dismiss the indictment this Court has the power, in its discretion, to permit an inspection of the Grand Jury minutes where it has reason to believe that there was insufficient evidence to support the indictment or that illegal evidence was its basis.

It is submitted that the planting of the wiretaps and eavesdrop electronic equipment in and about the homes, offices and hospital rooms of Harry Neyer, Martin C. Epstein and Harry Steinman, though made pursuant to *ex parte* Court orders, constituted illegal trespasses and invasions of the right of privacy of said persons and violated their constitutional rights against unlawful searches and seizures as is prescribed by the Fourth Amendment of the Constitution of the United States. *Mapp v. Ohio* made it crystal clear that the Fourth Amendment applies to the States and, where as here, the evidence against the defendant before the Grand Jury consisted of tape recordings

and wiretaps and eavesdrops and/or transcripts thereof, secured by flagrant violations of rights of privacy protected by the Fourth Amendment of the Federal Constitution, even though authorized by Court order, said evidence [fol. 36] and the fruits thereof are illegal and any indictment based thereon must fall. An inspection of the Grand Jury minutes will further reveal that the evidence against the defendant offered for that consisted of tape recordings of wiretaps and eavesdrops were obtained as a direct result of the aforesaid illegal wiretaps and eavesdrops and are thus equally tainted. It is submitted that under the circumstances herein this motion for an inspection of the Grand Jury minutes and, after inspection, for a dismissal of the indictment should be granted.

It is submitted that the orders authorizing the aforesaid wiretaps and eavesdrops in order to overhear and record conversations, communications and discussions in the expectation that "evidence of crime may be obtained," are invalid and violative of constitutional rights. Such orders are nothing more than throwbacks to the odious "General Warrants" of Colonial days. The law is clear that a search warrant may issue only to ferret out the "fruits and instrumentalities" of crime and not to effect a general search with the prospect that some evidence may by chance be uncovered. The *ex parte* orders hereinabove referred to were clearly not search warrants and the Court was wholly wanting in power to authorize invasion of privacy and an intrusion into constitutionally protected premises, among other places, a hospital room, private homes and attorneys' offices.

It is respectfully submitted that all the aforesaid wiretaps, recordings and all evidence against defendant uncovered as a result of leads furnished by them were illegally obtained in violation of constitutional rights of privacy under the Fourth Amendment of the Federal Constitution and, in consequence, must be suppressed on the trial of this case. In the alternative, movant requests a hearing and judicial review of the propriety of all *ex parte*

wiretap and eavesdropping orders as a result of which any evidence was obtained against the defendant and upon a [fol. 37] finding that said orders were issued contrary to statutory restrictions and in violation of constitutional rights of privacy, for a further order suppressing all evidence so illegally obtained and forbidding its use against the defendant on the trial of this case.

It is respectfully submitted that this motion be granted.
(Sworn to by Joseph E. Brill, May 7, 1965.)

EXHIBIT A, ANNEXED TO AFFIDAVIT OF JOSEPH E. BRILL

COURT OF GENERAL SESSIONS,
COUNTY OF NEW YORK.

IN THE MATTER

of

Overhearing Conversations Taking Place in Room 1619
at 525 East 68th Street.

It appearing from the affidavits of Jeremiah B. McKenna and Francis X. Clark, Assistant District Attorneys of the County of New York, sworn to on July 18th and 19, 1962, that there is reasonable ground to believe that evidence of crime may be obtained by overhearing and recording the conversations, communications and discussions that may take place in Room 1619 at 525 East 68th Street, in the County, City and State of New York; and the Court being satisfied as to the existence of said reasonable grounds, it is [fol. 38] ORDERED, that the District Attorney of the County of New York, or any police officer acting under the direction of the District Attorney, or other agent acting under the direction of the District Attorney, be, and hereby

is, authorized and empowered to overhear and record by means of any instrument any and all conversations, communications and discussions that may take place in the above-mentioned room; and it is further

ORDERED, that this order shall be effective until and including September 17th, 1962.

Dated, New York, N. Y., July 19th, 1962

JOSEPH A. SARAFITE
Judge of the Court of General Sessions

AFFIDAVIT OF RALPH BERGER, READ IN SUPPORT OF MOTION

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

State of New York,
County of New York, ss.:

Ralph Berger, being duly sworn, deposes and says: I am the defendant herein and submit this affidavit in support of the instant motion for an inspection of the Grand Jury minutes and dismissal of the indictment, for a bill of particulars, for an order striking certain Overt Acts from the Second Count of the indictment and to suppress all evidence obtained against me as a result of illegal wiretaps and eavesdrops, or, in the alternative, for a hearing on [fol. 39] the validity of the *ex parte* orders authorizing said wiretaps and eavesdrops.

I have read the affidavit of my attorney, Joseph E. Brill, sworn to the 7th day of May, 1964, annexed hereto and submitted in support of the above-described motion and incorporate by reference all the matters therein contained with the same force and effect as though fully set forth herein.

Wherefore, deponent prays that the instant motion be, in all respects, granted.

(Sworn to by Ralph Berger, May 7, 1964.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NOTICE OF MOTION TO SUPPRESS—September 30, 1964

[Title omitted]

Sir:

Please Take Notice that upon the notice of motion, dated the 6th day of May, 1964, the affidavits of Joseph E. Brill and Ralph Berger, both duly sworn to the 7th day of May, [fol. 40] 1964, submitted in support of said motion; Exhibit "A" annexed to the aforesaid affidavit of Joseph E. Brill; defendant's memorandum in support of said motion; defendant's brief submitted in reply to the People's memorandum in opposition to the motion to suppress all evidence obtained through eavesdrops in violation of defendant's right of privacy under the Fourth Amendment of the Federal Constitution; all of which papers are on file herein, and the Order of Hon. Gerald P. Culkin, dated the 25th day of June, 1964 and entered in the office of the Clerk of this Court, a copy of which Order is annexed hereto as Exhibit A, and upon all the proceedings heretofore had herein, the undersigned will move this Court at a Trial Term, Part 30, to be held at the Courthouse, 100 Center Street, in the Borough of Manhattan, City and State of New York, on the 5th day of October, 1964 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order suppressing any and all evidence obtained against the defendant as a result of illegal use of electronic wiretap and eavesdrop instruments and forbidding the use of said evidence at the trial of this case or, in the alternative, for a hearing and judicial review of the validity of all *ex parte* eavesdrop orders made pursuant to Section 813-a of the Code of Criminal Procedure as a result of which any evidence was obtained against the defendant and, upon a determination that said *ex parte* wiretap orders were issued contrary to statutory restrictions

or in violation of the constitutional rights of privacy under the Fourth Amendment of the Constitution of the United States of America, for a further order suppressing the evidence so illegally obtained and forbidding its use against the defendant on the trial of this case, and for [fol. 41] such other, further and different relief as may be just and proper in the premises.

Dated, New York, September 30, 1964.

Yours, etc.,

Joseph E. Brill, Attorney for Defendant, Office &
P. O. Address, 165 Broadway, New York, N. Y.
10006.

To: Frank S. Hogan, Esq., District Attorney, 155 Leonard Street, New York, N. Y. 10013.

EXHIBIT A, ANNEXED TO NOTICE OF MOTION

Decision by Culkin, J.

SUPREME COURT

NEW YORK COUNTY

Special and Trial Term, Part ~~XXX~~.

CULKIN, J.:

The defendant has made an omnibus motion in which he seeks various forms of relief. The motion is disposed of as follows:

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[fol. 42] D. This portion of the motion to suppress the use of certain evidence upon the trial and other related issues is denied. Under existing case law, these issues must await the trial (*People v. Golly*, N. Y. L. J., April 24, 1964, p. 16, cols. 4-6; *People v. Osterman*, N. Y. L. J., February

21, 1964, p. 18, cols. 6-7; see *People v. Laverne*, N. Y.
2d , decided June 10, 1964).

Dated: June 25, 1964

GERALD P. CULKIN
J. S. C.

[fol. 52]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Excerpts From Transcript of Motions and Trial

Motion to Suppress

100 Centre Street,
New York 13, N. Y.,
October 5, 1964.

Before: Hon. Mitchell D. Schweitzer, J.

APPEARANCES:

For the People: Jeremiah B. McKenna, Esq., and David
A. Goldstein, Esq., Assistant District Attorneys.

For Defendant: Joseph E. Brill, Esq., and Bernard J.
Levy, Esq., 165 Broadway, New York, N. Y.

Defendant indicted for Conspiracy (Count 1) and Con-
spiracy (Count 2).

[fol. 53] Indictment filed April 16, 1963.

On April 18, 1963, in Special and Trial Term, Part (2)
XXX, the defendant pleaded not guilty.

The Clerk: People against Ralph Berger.

(The defendant is arraigned at the bar.)

Mr. Brill: I think, your Honor, that a great deal of time
could be saved by marking in advance these documents
and the tapes so that we could then make reference to

them; and, incidentally, it would be helpful to have them marked now, because, if your Honor wants to hear them, we will already have them identified.

The Court: I quite agree with you. I will ask you to mark firstly the orders and the affidavits on which they are based. When I say "orders," I refer to the orders authorizing eavesdropping under section 813-a of the Code of Criminal Procedure.

OFFERS IN EVIDENCE

Mr. McKenna: Your Honor, the People now state that we intend to introduce evidence in the course of the trial which has been obtained over an eavesdropping device. This eavesdropping device was installed in Room 801 at 15 East 48th Street, in the County of New York. The People obtained a court order in advance of installing that eavesdropping device. The court order upon which that eavesdropping device was installed contained an affidavit, and in that affidavit we recited certain facts and certain evidence that the People had obtained or the District Attorney's office had obtained in the course of their investigation into the State Liquor Authority.

The evidence upon which the eavesdropping device was installed in Room 801 at 15 East 48th Street came out of another eavesdropping device which had been installed in Room 1001 at 22 West 48th Street, which was the office of Harry Neyer, an attorney.

[fol. 54] The eavesdropping device in Mr. Neyer's office was installed pursuant to another court order which the District Attorney's office had obtained.

The evidence upon which the court order was obtained for the eavesdropping device in Mr. Neyer's office came out of a Minifon recording of conversations which were held between Mr. Pansini and Mr. Neyer and Mr. Klapper, Mr. Klapper at that time being a clerk in the law office of Martin C. Epstein.

So if I may suggest the procedure to your Honor, we would introduce into evidence the two court orders relating to the eavesdropping devices in Room 801 at 15 East 48th Street and Room 1001 at 22 West 48th Street; and then, with your Honor's permission, the People would like to start the chain and lead up to the evidence or, rather, lead up to the court order in Room 801.

So, at this time the People ask that the Court mark as Exhibit No. 1 for the purposes of this hearing the court orders relating to an eavesdropping device in 15 East 48th Street.

For Mr. Brill's information, the first order and affidavit is dated June 12, 1962, and then we have the orders which extended this eavesdropping device.

• • • • •

Mr. McKenna: The date of the affidavit is June 11, 1962.

Now, an affidavit relating to Room 801 at 15 East 48th Street is an affidavit by Assistant District Attorney David Goldstein.

Mr. Brill: May we have copies of those available for us?

Mr. McKenna: I think we should have.

The Court: Received, and they are marked in evidence.

Mr. McKenna: Yes, your Honor.

Mr. Brill: And all of the renewals are contained in the offer?

[fol. 55] Mr. McKenna: Yes. I will give you the dates on that. Collectively, Exhibit 1.

(The Documents referred to were admitted in evidence and marked People's Exhibits 1 through 1-H, respectively.)

• • • • •

Mr. McKenna: And I offer as People's Exhibit No. 2 in evidence the court orders pertaining to Room 1001 at 22 West 48th Street. The first order is dated April 10, 1962, and annexed thereto are the extensions of that same order.

Mr. Brill: And the affidavit by, Mr. McKenna?

Mr. McKenna: As I recall it, it is dated also April 5, 1962.

Mr. Brill: And it is by Mr. Goldstein?

Mr. McKenna: That's right.

Mr. Brill: 4/10/62 as well; April 10, 1962?

The Court: Received and marked in evidence.

(The Documents referred to were admitted in evidence and marked People's Exhibits 2 through 2-F, respectively.)

Mr. McKenna: Your Honor, the genesis of the entire investigation and the initial piece of evidence in the chain which leads to People's Exhibit No. 1 is a Minifon reel which contains a recording of a conversation made on March 21, 1962, between Albert Klapper and Ralph Pan-sini. I have with me transcripts of that conversation. I also have the original Minifon recording spool and the People are prepared to play that entire conversation, if the Court so desires.

The Court: Well, is there any attack on the transcript because of any alleged infirmity in audibility.

Mr. Brill: Well, we don't know that, your Honor. We have never heard the reel. But I think it would be premature at this time to make it. I think perhaps it would be sufficient to have it marked for identification at this time.

[fol. 56] The Court: I quite agree with you.

Mr. Brill: We could deal with it later.

The Court: Mark it for identification only.

(The Document referred to was marked People's Exhibit 3 for Identification.)

Mr. McKenna: For the purpose of the record, your Honor, that is a transcript of a conversation contained on Minifon reel spool No. 214.

Mr. Brill: On March 21, 1962?

Mr. McKenna: That's right.

The second piece of evidence in the chain, your Honor, is a conversation which is contained on Minifon recording spool No. 218, which is a conversation between Ralph Pan-

sini and Harry Neyer, which occurs on March 28, 1962, and I have a transcript now of that conversation, which I offer as People's Exhibit No. 4 for identification only.

The Court: Mark it.

Mr. McKenna: I want the record to reflect I am giving Mr. Brill a transcript.

Mr. Brill: Thank you very much.

(The Document referred to was marked People's Exhibit 4 for Identification.)

Mr. McKenna: The third piece of evidence, your Honor, is a conversation which is contained on Minifon recording spool No. 220, which is a conversation that occurred on March 29, 1962, between Ralph Pansini and Albert Klapper. I offer this now as People's Exhibit No. 5 for identification.

The Court: Marked 5 for identification.

(The Document referred to was marked People's Exhibit 5 for Identification.)

Mr. McKenna: And I hand Mr. Brill a copy of that transcript.

If I may at this point, your Honor, point out that in that conversation of March 29, 1962, Mr. Klapper tells Mr. Pansini a number of things concerning the system whereby [fol. 57] money is paid by liquor licensees in order to obtain a liquor license from the New York State Liquor Authority. In that same conversation, Mr. Klapper informs Mr. Pansini that it is most unusual that he is even talking to Mr. Pansini concerning his liquor license; that he invariably deals with attorneys only; that Mr. Pansini is required to go through attorneys before he can obtain his liquor license in the fashion they are discussing. In that same conversation he asked Mr. Pansini for \$10,000, which will be contained in an envelope held by Mr. Klapper. He also tells Mr. Pansini, in response to Mr. Pansini's request that he sit down with Commissioner Ep-

stein to discuss the matter, that that is out of the question; that Mr. Epstein doesn't want to even know Mr. Pansini's name; he doesn't even want to know what he looks like or even meet him; that he must deal only through an attorney and through himself; and the attorney, of course, in this transaction is Mr. Neyer; and this is contained, a confirmation of this is contained in People's Exhibit No. 4, which is the conversation between Mr. Pansini and Mr. Neyer, in which Mr. Neyer indicates he has been working with Mr. Klapper in the past, he is quite well aware of the going rate to get a liquor license downtown.

I might point out for your Honor's edification that Mr. Pansini was attempting to get a liquor license for a place on West 45th Street, which is what they call in the State Liquor Authority a saturated area; there were too many liquor licenses there, so that it would be most difficult to get a liquor license in this particular area and, of course, the price would be very high.

Mr. Brill: I am certain, your Honor, that Mr. McKenna will acknowledge that none of the matter to which he adverted as being contained in this document now known as Exhibit 4 for identification has any reference to Mr. Berger or the matter in connection with which we are before your Honor today.

[fol. 58] Mr. McKenna: I shall now—

Mr. Brill: Such objections as we have, your Honor will permit us to reserve?

The Court: Certainly.

Mr. McKenna: Now, your Honor, from the conversations of March 28 and March 29 of 1962, the People prepared an affidavit requesting authorization to install an eavesdropping device in the office of Harry Neyer, which order and affidavit have been marked in evidence as People's Exhibit No. 2.

Now, over that eavesdropping device in Mr. Neyer's office the People recorded conversations between Harry Neyer and one Harry Steinman concerning a conspiracy to bribe a public official, namely, a member of the New

York State Liquor Authority, in order to obtain a liquor license. The specific transaction which is referred to in People's Exhibit No. 2 concerns the Palladium, which was a dance hall having a liquor license, located at No. 1698 Broadway. The People have transcripts of conversations between Mr. Neyer and Mr. Steinman concerning this particular liquor license, and the figure of twenty-five or five figures—I am sorry—is initially given by Mr. Neyer for a prospective license for the Palladium.

If I may give your Honor some background, the Palladium at that time was up for a revocation of its liquor license because of a raid that had been conducted by police officers under the command of the District Attorney's office, and in this raid upon the Palladium narcotics had been found in the Palladium, as a result of which revocation proceedings had been instituted against the Palladium.

We will produce, if your Honor wishes, the full file from the State Liquor Authority concerning the Palladium license.

Now, Mr. Neyer adverts to this in his conversation with Howard Mauro, who comes into Mr. Neyer's office and in [fol. 59] forms Mr. Neyer he wants to obtain a liquor license for the Palladium. Mr. Neyer informs him it is going to be very difficult; that the District Attorney's office will be watching this particular matter and it is probably going to cost him in the area of five figures.

Mr. Neyer then has conversations with Mr. Steinman and other persons. In the course of some of these conversations, we have one-half of a telephone call, of several telephone calls between Mr. Neyer and a person he refers to on the telephone as Mr. Berger; and in the conversation with Mr. Berger Mr. Neyer discusses also the obtaining of a liquor license for the Palladium and mentions the fact that this is going to be a big one.

After one such conversation with Mr. Berger, we have one-half again of a telephone call Mr. Neyer—I am sorry. I am going to go back a bit. In one of these conversations

Mr. Neyer mentions the figure of about \$30,000 as being the price that they would charge in order to obtain a liquor license for the Palladium. He calls back Mr. Mauro after one of these conversations and informs him that it is really going to cost him to get that liquor license even higher than he initially told him.

These are the conversations that are referred to in the People's affidavit or in Mr. Goldstein's affidavit upon which the order is based for Mr. Steinman's office.

We also have an observation where detectives from the District Attorney's office followed Mr. Steinman from one of these meetings in Mr. Neyer's office, placed him in his own office, and we were able to identify who Mr. Steinman was.

These transactions then become the basis of the order for the eavesdropping device to be installed in Mr. Steinman's office, which is Room 801 at 15 East 48th Street.

Mr. Brill: I take it that Mr. McKenna will acknowledge also that none of the subject matter to which he has just [fol. 60] adverted is any part of this case which has been called to trial before your Honor.

Mr. McKenna: That's right, your Honor. I am not—I think evidence can be brought out during the trial that Berger, who Mr. Steinman, Mr. Neyer speaks to concerning the Palladium, is, in fact, the defendant Ralph Berger.

However, the eavesdropping device is then installed in the office of Harry Steinman, and it is from this eavesdropping device that the evidence is obtained concerning the conspiracy to bribe a public official in order to obtain a liquor license for the Palladium and the conspiracy to bribe a public official in order to obtain a liquor license for the Playboy Club.

I am sorry. And there is also a copy embraced—

Mr. Brill: Did I understand you—I beg your pardon; I don't like to interrupt—did I understand Mr. McKenna to say the "Tenement" instead of the "Palladium"?

The Court: That is what I understood. I understood that.

Mr. Brill: Thank you.

Mr. McKenna: Yes. And the Tenement. Now, the Tenement and the Playboy Club are, of course, the subject matter of the two conspiracy counts in the indictment.

Now, if your Honor please, I have handwritten transcripts of the conversations in Mr. Neyer's office, between Mr. Neyer and Mr. Steinman, concerning the Palladium situation. They are not complete and accurate reproductions such as People's Exhibits 2 through 5 of the conversations. They are summaries of the conversations by the District Attorney's detectives. We have a detective here; we have the tapes. If your Honor wishes, we could play the tapes, but I will produce the conversations, the transcripts.

The Court: All right.

Mr. McKenna: Your Honor, may I mark for identification the transcripts of the conversations obtained over the [fol. 61] eavesdropping devices in Mr. Neyer's office pertaining to the Palladium? I have agreed with Mr. Brill that I will have copies made of these transcripts and present them to him as soon as they are photostated. In the meanwhile, can they be marked for identification as People's Exhibit 6, collectively.

(The Transcripts referred to were marked People's Exhibits 6 to 6-G for Identification, respectively.)

The Court: All right, they are marked.

Mr. McKenna: Your Honor, the first transcript is of a conversation that occurred on May 17th, 1962, and that is on Reel Number 5323. The transcript is marked People's Exhibit 6.

The second transcript pertains to a conversation on May 24th, 1962, and that conversation is contained on Reel 5324.

Mr. Brill: Is that 6-A, Mr. McKenna?

Mr. McKenna: The transcript is People's Exhibit 6-A for identification.

The third transcript is dated May 25th, 1962, and it is contained on Reel Number 5324. That transcript has been marked as People's Exhibit 6-B.

The fourth transcript is marked People's Exhibit 6-C for identification, and it is also Reel 6324.

Mr. Brill: And the date, please?

Mr. McKenna: The date is May 28th, 1962.

Mr. Brill: Thank you.

Also, on that same transcript of May 28th, 1962, there is a second Reel Number 5390.

The final transcript is dated May 29th, 1962. It is Reel 5390, and it is People's Exhibit 6-D for identification.

The sixth transcript is People's Exhibit 6-E for identification and it is Reel Number 5391.

Mr. Brill: The date, please.

Mr. McKenna: The date is June 4th, 1962.

Mr. Brill: Thank you.

[fol. 62] Mr. McKenna: The sixth transcript is marked People's Exhibit 6-F for identification. It is a conversation which occurred on June 6th, 1962, and the Reel Number is 5391.

Finally, the seventh transcript is dated June 8th, 1962, and it is a conversation which is recorded on Reel Number 5446.

Your Honor, that completes the chain of evidence which leads to the Court order authorizing the installation of an eavesdropping device in Room 801 at 15 East 48th Street.

Mr. Brill: Would it be appropriate, in order to avoid burdening the record and complicating our understanding to have each of the reels identified, marked for identification, taken under Exhibits 1 through 1-H and 2 through 2-F, in the same manner as the underlying information was identified by Mr. McKenna?

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Mr. Brill: With the Court's permission, it is stipulated between counsel that the numbers of Exhibits 1 through 1-H and 2 through 2-F, heretofore marked in evidence,

be changed so that Exhibits 1 through 1-F will be the affidavits underlying the original orders, and the renewals of the orders relating to the eavesdropping devices placed in the premises 22 West 48th Street, the office of Harry Neyer, an attorney, and that Exhibits 2 through 2-H will be the orders, or the affidavits underlying the orders, and the renewals of such orders, relating to the placing of an eavesdropping device at premises 15 East 48th Street, the office of Harry Steinman.

(Exhibits were so marked as indicated.)

Mr. Brill: If your Honor please, in connection with the stipulation, with your Honor's permission, may the record show that Exhibits 3, 4 and 5, previously marked for identification, relate to Exhibit 1 and its subsidiary exhibits, 1 through 1-F, and that Exhibits 6 through 6-G for identification relate to Exhibit 2 through 2-H.

[fol. 63] The Court: All right.

Mr. McKenna: By stipulation, your Honor, Exhibits 7-A, B and C—first let me offer for identification, your Honor, Exhibit 7, which is the tape recording, Number 5323, previously referred to, that is Reel Number 5323.

That relates to the transcript dated May 17th, 1962. I now offer this for identification as Exhibit Number 7. Your Honor, it is understood that we are only offering that part of the reel that refers to the pertinent conversation on that transcript.

Mr. Brill: And, further, so that the record will be clear, your Honor, 7 for identification is the reel from which the transcript, Exhibit 6 for identification, is purportedly made, right?

Mr. McKenna: Yes.

(Reel 5323 was then marked People's Exhibit 7 for identification.)

Mr. McKenna: Well, I would like to withdraw Reel Number 7 and in its place substitute recording 5324, and mark it as 7.

The Court: All right.

(Reel 5324 was then marked as People's Exhibit 7 for Identification, replacing the previous reel so marked.)

Mr. McKenna: That relates to Exhibit 6, 6A, 6-B and 6-C.

The Court: All right, so ordered.

Mr. McKenna: Your Honor, we are obtaining Reel Number 5390, which relates to Exhibit 6-D. We don't have it, it is on its way up, and that will be marked as Exhibit 7-A.

(Reel Number 5390 marked as People's Exhibit 7-A for Identification.)

Mr. McKenna: Your Honor, I now offer as Exhibit 7-B Reel Number 5391, which also relates to Exhibit 6-D, and in addition, 6-E, and 6-F.

The Court: Mark them for identification.

[fol. 64] (Reel Number 5311 was marked as People's Exhibit 7-B for Identification.)

Mr. McKenna: Finally, your Honor, I offer Reel Number 5446, as People's Exhibit 7-C for identification, which relates to Exhibit 6-G.

The Court: Mark it for identification.

(Reel Number 5446 was marked as People's Exhibit 7-C, for Identification.)

Mr. McKenna: Your Honor, that completes the exhibits which form the basis of the eavesdropping devices, or the eavesdropping orders, which are People's Exhibits 1 and 2, collectively.

Mr. Brill: That's right. I take it that Mr. McKenna represents that in connection with Exhibit 1 through 1-F, and 2 through 2-H, there were no other tapes recorded beyond those which have been marked for identification here today as Exhibit 7 through 7-C, and that there are no other tran-

scripts or reports in relation to those, other than those which have been marked for identification, exhibits for identification, all of these 6-A through 6-G—

Mr. McKenna: Let me clarify it. There are others, but these are the ones that pertain to Exhibits 1 and 2.

Mr. Brill: That is all I mean.

The Court: That is all we are concerned with at this time.

Mr. McKenna: Right, your Honor.

Mr. Brill: All right, and in connection with this case there would be no others in connection with this—

The Court: He has not made that statement.

Mr. Brill: That is what I am trying to find out.

Mr. McKenna: There will be other tapes, your Honor, introduced into evidence, coming out of the eavesdropping device which is obtained under Court order, People's Exhibit Number 2.

[fol. 65] Mr. Brill: I think we should have them all marked for identification.

Mr. McKenna: Not at this time, your Honor, they have nothing to do with the eavesdropping device, they come after the installation.

The Court: What you are stating, as I understand it, is that all that he is doing, or should be required to do, at this time, is to mark for identification the material, or sources, utilized by the District Attorney's Office, in order to secure the orders marked 1 through 1-F and 2 through 2-H?

Mr. Brill: That is only part of it. Now, I am concerned with having marked for identification, so that your Honor will have before the Court, so that he may examine in camera, and so that the record will establish that the evidence obtained under orders and renewals, based upon which constitute exhibits 1 through H and 2 through F—so that your Honor can find there is the evidence concerning which we seek to suppress, and which we say was illegally obtained—and without having that marked for iden-

tification your Honor will not be in a position, either to suppress the evidence, or the leads from it, the leads that were obtained from it, because it won't be part of the record of this Court.

The Court: May I hear the District Attorney on that?

Mr. McKenna: I don't think that is necessary. If your Honor decides to suppress any evidence obtained as a result of these eavesdropping devices everything goes out. I don't have to put in the particular tapes, I could not offer any tapes whatsoever.

Mr. Brill: Except that there is another problem, your Honor will not then be in a position to determine upon the trial, if a trial is ordered, what was obtained by eavesdropping, so that your Honor can consistently maintain the rulings excluding the material which your Honor says should be suppressed.

[fol. 66] Mr. McKenna: I will concede that any of the tapes that we produce in evidence were obtained as a result of eavesdropping.

Mr. Brill: I don't think it is enough. I think the record has to be clear, in the event that we have to go to an appellate court.

The Court: Well, they are merely marked for identification.

Mr. McKenna: I don't have them at this time, your Honor.

Mr. Brill: That is easy, we can accommodate him—

The Court: Are they available?

Mr. McKenna: Yes.

The Court: Do you want to put it in at 2 o'clock, mark them at 2 o'clock?

Mr. McKenna: Yes.

The Court: All right, we can do it that way.

Mr. McKenna: Yes.

The Court: For the Record: As I understand it, there are two issues for the Court to resolve—the preliminary issue whether or not there has been jurisdictional compliance with section 813-a; and, secondly, whether or not

this evidence should be suppressed because, as counsel contends, it was secured through a violation of the defendant's constitutional rights.

Mr. Brill: That is correct, your Honor.

Mr. McKenna: Your Honor, I have that exhibit, 5390, which is—

Mr. Brill: Which is Exhibit 7-A for identification.

Mr. McKenna: Can we have it marked, your Honor?

The Court: Mark it.

(The object referred to was marked People's Exhibit 7-A for Identification.)

[fol. 67]

Afternoon Session

2:15 p.m.

Mr. McKenna: Your Honor, the tapes are on their way, but I think we can offer them now as exhibits, that these are the objects of the motion to suppress.

The Court: In other words, what you are representing now is that you have in your possession actual tapes which you plan to utilize in the presentation—

Mr. McKenna: Yes, sir.

The Court: —of the evidence on behalf of the People—

Mr. McKenna: Yes, your Honor.

The Court: —which you have indicated to the Court are the objects of the defendant's motion to suppress?

Mr. McKenna: Yes, sir.

Your Honor, I also state in advance that these are not the—I don't want to be limited or committed to the fact that these are the only tapes, but right now these are the major tapes which the People plan to produce.

I offer now as Exhibit 8, Tape No. 5483.

I offer as 8-A Tape No. 5517.

Mr. McKenna: For identification only, your Honor.

(The objects referred to were marked People's Exhibits 8 and 8-A, respectively, for Identification.)

Mr. McKenna: I now offer as People's Exhibit 8-B for Identification Tape No. 5537.

(The object referred to was marked People's Exhibit 8-B for identification.)

Mr. McKenna: I offer as Exhibit 8-C for identification Tape No. 5816.

(The object referred to was marked People's Exhibit 8-C for Identification.)

[fol. 68] Mr. McKenna: And I offer as Exhibit 8-D for identification Tape No. 5817.

(The object referred to was marked People's Exhibit 8-D for Identification.)

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COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Brill: * * * Your Honor, with respect to the offer made by Mr. McKenna, I submit that it is incomplete for the purposes of this record, first, to enable your Honor to arrive at a fair determination and, secondly, to insure that there is a complete record in the event that either side may desire to take the matter to an appellate court.

It would seem to me that all of the tapes procured from any of the orders on the basis of which either evidence or leads were presented to the Grand Jury or for use upon the trial should be marked for identification before this Court at this time.

The Court: Well, I will assure you that in the event the Court makes a determination favorable to the defendant that the evidence should be suppressed, the order to be entered by the Court will be sufficiently comprehensive to encompass not only the five exhibits—

Five?

Mr. McKenna: Yes, sir.

The Court: —marked for identification, but any and all other recordings which may have resulted from either of the two orders marked Exhibits 1 and 2. So that should protect your interests.

Mr. Brill: I have no question but that certainly would be in such an event your Honor's intention and that such an order would be so designed. But the vice is that we would not be able to identify the material which might be offered upon the trial, and there would be no way then to ascertain whether that material is part of the matter which should be now identified.

[fol. 69] Certainly, the People cannot be prejudiced if the other tapes, all of the tapes are marked for identification. I repeat, we are not asking for a discovery and inspection. We merely want an identification for the purpose of the record and to enable your Honor to make a determination.

Mr. McKenna: Your Honor, just to satisfy Mr. Brill, if your determination is that the tapes should be suppressed, I think at that time I would let Mr. Brill know of all possible tapes that could have been used against his client, and then these will be included in your order to suppress.

At this point, I have no way of saying which tapes I intend to introduce into evidence at the trial, other than the main five tapes.

Mr. Brill: Well, this becomes a personal characterization, "main tapes" and "subsidiary tapes." In so far as the defendant is concerned, none of the tapes have a place before the Court and this is the purpose of this hearing.

The Court: And again I say, Mr. Brill, I can't conceive of any possible prejudice inuring to the defendant from the fact that, if you prevail on this pure issue of law, the order to be entered will embrace all tapes, whether marked for identification or not.

Mr. Brill: Well, let us assume that we go forward to a trial for the purposes of this discussion, and at some point in the trial the District Attorney—and I don't say that Mr. McKenna would deliberately do this because I have the highest esteem for Mr. McKenna, and I think he is aware of it, as I think your Honor is, but whether by accident or design, without Mr. McKenna or in his presence, a tape, a tape which should have been previously identified as one of those in which evidence or leads were obtained from an improper and unlawful intrusion upon a constitutionally protected area should be offered, we couldn't [fol. 70] identify that tape at that time unless there was previously in this hearing a form or a means of identification. I don't want to hear them.

The Court: We could mark them *nunc pro tunc* as an item for identification, if he chooses to introduce any tapes in addition to those that are presently marked.

Mr. Brill: Then in order to insure that there can be no question about it and so that the record will be clear, one of two alternatives present themselves, so far as I see it. I may be in error. Either that they all be marked now for identification, and again with the admonition that I am not seeking now to examine into them or hear what their contents are, or, two, that there be a statement as to the number of reels and what the numbers are so that if, as, and when by any chance they may later come up, we at least will know what has been referred to as being part of the material in this motion; and certainly there can be no prejudice to the People but there may be—

The Court: I don't want to be put in the position where I am directing him to state now what tapes he plans to introduce.

Mr. Brill: No, I am not asking you to do that. I am suggesting to the District Attorney, with your Honor's permission, through the Court, that he has these alternatives.

Mr. McKenna: Your Honor, there will be a *voir dire* on any tape that goes into evidence, and I think we can

certainly screen any tape in advance before it is ever played for a jury.

The Court: Well, I will go further than that. We can also make it an additional exhibit—

Mr. McKenna: Yes, your Honor.

The Court: —*nunc pro tunc*—

Mr. McKenna: I consent to that.

The Court: —so that there can't be any conceivable prejudice to you, Mr. Brill.

[fol. 71] Mr. Brill: All right.

Now, one further thought, your Honor, on this hearing. If your Honor is satisfied that the record in that state protects the rights of the defendant, I am satisfied.

Now, it seems to me that in order for your Honor to be able to reach the second branch of this motion which will necessarily be before your Honor for disposition, your Honor will have to know what is in these tapes with respect to the evidence and the leads; and, consequently, I suggest, and again I say I am not interested in an examination of such material, that the transcripts or purported transcripts of these be marked for identification, so that your Honor may examine them in camera to ascertain whether that evidence or leads from those transcripts were employed in connection with the presentation of the matter to the Grand Jury, so that your Honor can deal with the second branch of the motion.

The Court: Have you any objection?

Mr. McKenna: Yes, your Honor. I don't see the relevance of the transcript in this particular case. Either the tapes were obtained lawfully or unlawfully. If they were obtained unlawfully, there is no need for your Honor to see the tapes, to see the transcripts of these tapes. If they were obtained lawfully, your Honor, then the transcripts are going to go into evidence. But the actual physical content of the tapes is not in issue in this particular hearing. The only thing that is in issue is whether they were lawfully obtained.

The Court: Do you see any objection to marking the transcripts only for the Court, marking them for identification only? You see any harm?

Mr. McKenna: No, your Honor.

The Court: And that is only for the Court.

Mr. Brill: Right.

The Court: This is not giving the defense a preview of your case.

[fol. 72] Mr. McKenna: With your Honor's permission, I don't have the tapes here.

The Court: You mean the transcripts.

Mr. McKenna: The transcripts. I don't have the transcripts here. I will have to obtain them.

The Court: And they will be deemed marked Exhibits—

Mr. McKenna: 9, 9-A, 9-B, 9-C, and 9-D.

The Court: Why don't you make them 8 with a different subdivision?

Mr. McKenna: E, F, G?

The Court: To match these.

Mr. Brill: Well, to match these, if I may suggest, 9 through 9-D make a better fit.

The Court: All right.

Mr. McKenna: At this point, your Honor, I believe there are only four transcripts to those two tapes relating to one transcript. I am just not certain of that.

Mr. Brill: Well, that can be straightened out at the time.

Mr. McKenna: Yes.

The Court: This presents, at least at this time, all of the tangible evidence which the People represent to the Court are the objects which the defense seeks to suppress?

Mr. McKenna: Yes, sir.

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Mr. Brill: May I by way of assistance to the Court suggest that we might ascertain whether 8 through 8-D are the original tapes—

Mr. McKenna: Yes.

Mr. Brill: —or whether these were made from original tapes.

Mr. McKenna: No, these are the original tapes.

Mr. Brill: Very good, sir.

The Court: Now, Mr. Brill, I will hear you on your oral argument.

Mr. Brill: Now, may we have the dates on each of these, 8-A to 8-D, inclusive? I don't think we have those.

[fol. 73] Mr. McKenna: You see, your Honor, that is what I was afraid of at this particular hearing. Those dates will enable the defense to determine what sort of evidence the People have at this point. I don't think the People should be forced to disclose the dates.

The Court: I don't think the dates constitute any part of this application.

Mr. Brill: Oh, I think they do, Judge, because if the material contained in these tapes is material which was obtained either by way of evidence or leads to other evidence, that dates prior to the time when any evidence independent of either that evidence or the leads could possibly have been obtained would go to the heart of the matter.

The Court: Those dates will be reflected in the transcripts which the District Attorney will furnish to the Court and I will have them.

Mr. Brill: That satisfies me.

Now, can we have again, for the purposes of identification, so that there will be no question about it, since these five exhibits, 8 to 8D, apparently refer to two locations, may we have them identified with respect to which refers to the 48th Street location and which to the—

The Court: Mr. Brill, won't all this be reflected in the transcript which I will read?

Mr. Brill: Good. All right, sir. Good.

Now, there is one other matter, I think, that we should deal with, your Honor. I don't think that the record is complete at this time and the reason I say that is because, I believe, based upon an affidavit which became a matter

of record in this court in another proceeding that there was another eavesdropping device placed in a constitutionally protected area for the purpose of obtaining evidence or leads with respect to evidence against this defendant, Ralph Berger, and this information comes to me from part of an exhibit in a hearing had before Mr. Justice [fol. 74] Sarafite and is contained in an affidavit made by Mr. McKenna, sworn to on July 18, 1962, in which, having made references to the eavesdroppings in the offices of Harry Neyer and Harry Steinman, he requests an order for an eavesdropping in Room 1619 of the New York Hospital, where one Martin C. Epstein was confined as a patient. That order for that tape was requested so that—and I now quote from the last paragraph on page 4 of Mr. McKenna's affidavit—"Surveillance will be maintained on the aforementioned Room 1619 so that only those conversations will be overheard where Ralph Berger is present, or other persons believed to be engaged in the liquor industry, during which conversations Martin C. Epstein's nurse and other visitors are excluded."

Now, this obviously is for the purpose of obtaining evidence against Mr. Berger. The order was made by Mr. Justice Sarafite on the 19th of July, 1962, authorizing the placing of electronic equipment, or whatever recording devices were available for the purposes of obtaining evidence against Mr. Berger, and it seems to me that on this motion to suppress that material is properly before the Court and the tape, the transcript, should likewise be before your Honor so that your Honor may consider that material as well as that contained in the tapes and transcripts obtained pursuant to Exhibits 1 and 2, with the subsidiary numbers.

Mr. McKenna: Your Honor, I think this recent motion illustrates what the People fear, coming from the defendant, Ralph Berger. He would be only too happy to know, I am sure, whether or not the People have tapes of his conversations with Mr. Epstein, and what leads we derived therefrom.

All I can state at this point, your Honor, is that the People have no intention of offering at the trial any tapes obtained through an eavesdropping device installed in Room 1619 at New York Hospital, nor is any of the evidence [fol. 75] that the People intend to produce in the course of the trial obtained as a result of leads obtained from the eavesdropping device installed in Room 1619 in New York Hospital.

Mr. Brill: Well, there is another branch to that, your Honor.

Will the District Attorney advise the Court specifically that none of the evidence obtained through the employment of that device in that place, the hospital room at New York Hospital, or leads obtained as a result of the electronic eavesdropping, or other eavesdropping devices, resulted in evidence or leads which were presented to the Grand Jury that returned the indictment in this case?

Mr. McKenna: This cannot be made that definite, your Honor.

The Court: All right.

Mr. McKenna: The Fourth December, 1962, Grand Jury, is the one that heard this evidence. However, I am pretty sure at this time that the indictment against Mr. Berger was returned well before any evidence was presented to them, which evidence stemmed from an eavesdropping device installed in Room 1619 in New York Hospital, so that Grand Jury, in effect, did not hear the evidence, did not hear in the course of its deliberations concerning Mr. Berger any evidence which was obtained from the eavesdropping device installed in Room 1619 at New York Hospital.

Mr. Brill: I appreciate Mr. McKenna's difficulty, your Honor, but I think that the Court is obliged to have more than an estimate of the situation. It is placed in a position where confronted with the obligation to make a decision on the motion with respect to the indictment, as to whether there was sufficient legal evidence to know, one, whether or not such evidence was, in fact, presented, and

to what extent was the evidence presented, and what were the leads obtained that were presented resulting in other evidence presented to the Grand Jury? That is so that the [fol. 76] Court may be able on a reading of the Grand Jury Minutes to arrive at a determination.

Mr. McKenna: Your Honor, Number 1, I am well nigh certain that my previous statement is accurate. I shall check it as soon as we leave this courtroom, and if there is any revision I shall inform the Court.

But, secondly, whether or not the Grand Jury heard the evidence has no pertinency to this hearing.

The Court: I quite agree with you.

In any event—and here again I want to have you keep in mind at all times the pure issue of law that you raised with respect to the prospective legal admissibility of these tapes—if there is a determination favorable to the defense you may then move before this Court for a dismissal of the indictment and I will entertain your motion. That is not before me at this time.

Mr. Brill: Except, your Honor, that the District Attorney at such time may argue that he has other evidence, whereas this motion addressed to your Honor has two branches: the first deals with the suppression of evidence; and the second, that upon such suppression, if your Honor finds that there was such evidence offered and presented to the Grand Jury, and there was not sufficient legal evidence on the basis of which this indictment could have been returned, your Honor would then be obliged to dismiss the indictment, and we would not be left in the position then, anomalously, where we would have to wait for the statement from the District Attorney as to whether or not he had offered other evidence and would seek to offer it at the trial, or on the trial.

The Court: He has given me every reasonable assurance there is no other evidence, he will recheck his evidence, in any event, and I think we can proceed with the oral argument now.

Mr. Brill: Just one thing, further, if I may.

The Court: Yes.

[fol. 77] Mr. Brill: I think in order to make the record complete—perhaps the District Attorney can help us further, assist the Court in arriving at a determination of the question of law—if I understood him correctly, he said that apart from the evidence derived from the eavesdrops, and the leads followed through as a result of the eavesdrops—that was the only evidence that he presented to the Grand Jury—and I think this is essential to the record—I would ask the District Attorney to concede that Mr. Berger, Harry Neyer and Martin C. Epstein, did not appear and testify before the Grand Jury which returned this indictment.

Mr. McKenna: I will concede that Harry Neyer and Martin Epstein and Ralph Berger did not appear before the Grand Jury which returned this indictment.

Mr. Brill: All right.

Now, I would like, further, a concession that Harry Steinman was indicted for perjury and charged in several counts with the crime of perjury, in Indictment Number 1789 of 1963, and that his testimony before the Grand Jury was contradicted by evidence, or leads to evidence, from eavesdrops referred to in this case.

The Court: Is the District Attorney required to make this concession at this time?

Mr. Brill: If he does not, your Honor, I will have to call upon him as a witness to establish it as a matter of fact before the Court, and I think I can.

A quick reference to the indictment of Steinman will disclose on its face that this must be the fact. If it is not, and he will say it is not the fact, we will try to reach it in another way. I was trying to save time.

Mr. McKenna: Your Honor, I am not able to discuss what occurred in the Grand Jury without falling afoul of the Penal Law. Your Honor, I think the indictment of Mr.

Steinman is a matter of public record, and I just don't see the relevancy at this point.

[fol. 78] The Court: I quite agree with you.

Do you have anything else, Mr. Brill?

Mr. Brill: Well, I would like to reserve the privilege of calling witnesses in connection with this hearing until after your Honor has had the chance to examine the matters of law.

Now, addressing myself—

The Court: Just one moment, if you have any witnesses to call in aid of the present motion, do so now before I decide the motion.

Mr. Brill: Well, all right. One of the things I tried to do was to avoid the necessity for calling Mr. McKenna, but I am afraid I will have to do that now in order to establish some facts which will be necessary upon this motion. I am sorry, but, Mr. McKenna, take the stand.

JERAMIAH B. MCKENNA, residing at 40 Valencia Avenue, Staten Island, New York, called as a witness on behalf of the Petitioner, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Brill:

Q. Mr. McKenna, is it not true that prior to April 5th—I beg your pardon—April 5, 1962, the date of your affidavit in support of an application made to Mr. Justice Sarafite for an order authorizing the eavesdropping by means of any witnesses, of any instruments, conversations, communications, and discussions, for the purpose of obtaining evidence where such conversations, communications and discussions were had in Room 1001 at 22 West 48th Street—and did you not obtain the order which is now Exhibit 1 on the basis of that affidavit in this court?

A. Yes.

[fol. 79] Q. Now, prior to that date did you have an informant who furnished you with any information or material which is the subject matter of the indictment now before this Court, namely, Indictment Number 1402 of 1963, which contains two counts charging this defendant Ralph Berger in each with a conspiracy?

Mr. Goldstein: If your Honor please, I am going to object to the question for two reasons: one, as to content; and, two, as to the form. I believe on the motion to suppress the Court is bound by the order and the affidavit, and here Mr. Brill is attempting to elicit whether an informer was involved, or was questioned, and so forth, by Mr. McKenna, prior to that date.

I think that the affidavit speaks for itself. The questions concerning this informant should not be elicited at this time and for the purpose of this motion.

Mr. Brill: I think Mr. Goldstein misconceives the point of my question.

Mr. Brill: Let me clear it up.

* * * * *

Mr. Brill: With your Honor's permission, I believe we are now in a position to stipulate that without the evidence, or the leads obtained, the evidence obtained through and the leads obtained from, the eavesdropping devices placed in the two addresses, specified in Exhibits 1 and 2, the District Attorney had no information upon which to proceed to present a case to the Grand Jury, or on the basis of which to prosecute this defendant for the crimes charged in the indictment at bar now, and that all of the evidence and the leads obtained, offered by the District Attorney to the Grand Jury, and sought to be offered upon the trial [fol. 80] of this indictment, if it is obliged to go to trial, were so obtained from such eavesdropping activities on the part of the District Attorney and his agents and that all the evidence and all the leads were derived therefrom.

Mr. McKenna: So stipulated.

The Court: You can step down.

(Witness excused.)

Mr. Brill: Now, I think we can go into the argument on questions of law.

ARGUMENT OF MR. BRILL

Mr. Brill: First of all, may I invite your Honor's attention to decisions by the Supreme Court of the United States in *Harris v. The United States*, reported in 332 U. S. at 145; *Abel v. U. S.*, 362 U. S. 216; and the *United States v. Lefkowitz*, reported in 285 U. S. 452.

These are some of the cases to which on an earlier discussion on the question of law I adverted when I said that regardless of the nature in which a search for evidence came into existence, where it was merely an exploratory search for the purpose of obtaining evidence, and merely evidence, such conduct is repugnant to the Fourth Amendment to the Constitution and the Fifth Amendment to the Constitution of the United States, and any evidence so obtained may not be employed in connection with any prosecution against any individual who is entitled to the Constitutional protection and the guarantees which are to be protected.

Now, it may be argued that an order under 813-A is the equivalent of a search warrant, and such an argument of necessity is based upon a distortion of language employed by Mr. Justice Stewart, I believe, in *Silverman v. U. S.*, wherein it was held that a trespass upon a Constitutionally [fol. 81] protected area—and we recognize how offices, homes, or places of business, shops, or hospital rooms, are such Constitutionally protected areas—will not be, and evidence obtained by reason of such trespass is repugnant to the Fourth Amendment, and constitutes an unlawful search and seizure and, therefore, cannot be employed.

In his opinion in that case Mr. Justice Stewart used the word "warrant" in describing the absence of what purports to be judicial authority to proceed to make a

search, but I say that an argument based upon an attempt to extend the use of the word "warrant" is unrealistic, because "warrant", as we have known it, historically and traditionally, deals with the two types, one the general warrant, or writ of assistance, which was one of the reasons for the Revolution, as a result of which we now have Constitutional guarantees, and the other is the search warrant, which is a matter of statute, pursuant to the rules of the United States, the United States Code, Title 18, Rule 41, which describes what may be obtained.

In the latter case where a search warrant is obtained upon a showing of probable cause, it is issued and it authorizes the officers, it authorizes only the officers who are charged with the execution of the warrant to obtain as a result of such execution the fruits of the crime, or the means by which the crime was committed.

It does not authorize obtaining evidence as such, nor is it issued, nor may it ever be issued, merely for the purpose of obtaining evidence, as such. Consequently, it cannot be said under any circumstances that an order under 813-A, although the statute of this State so designated, apparently authorizes such conduct, it cannot be said that such [fol. 82] conduct and evidence obtained pursuant to the execution of such an order is consonant with the rights guaranteed under the Constitution, in the Bill of Rights, and, specifically, the Fourth and Fifth Amendments, because it must be obtained by reason of an intrusion upon Constitutionally protected areas, by invasion of private right without invitation, or consent, by a trespass, if your Honor please, and, therefore, it cannot be said to be reasonable in order to obtain it.

Oh, there has been some suggestion that the Fourth Amendment extends only to what may be said to be tangible physical evidence. But this is an unrealistic position and I have only to refer to the language of Mr. Justice Brennan in the *Lopez* case, in which he said, in sum, that come the time when that kind of situation is permitted and government allows it, then we have reached the time when we as

a people will become hagridden and furtive, and this is no mere fantasy on the parts of those who are so concerned with injustice and the violation of the Fourth and Fifth Amendments, which must be taken and read together.

As the cases indicate, one has the right against the invasion and the compulsion to be a witness against himself. Absent the specific invitation or authorization to come upon a constitutionally protected area, then any evidence which is obtained where the purpose is merely to obtain evidence must, of necessity, fall and such evidence must be suppressed.

I think that your Honor has the cases in a memo which we have previously submitted. There are two actually in the file and I would like to say just by way of pointing up the difference, we are not here involved in wire taps, and [fol. 83] the suggestion that the Olmstead case, which was a wire tap case where there was no physical invasion, no intrusion, no trespass, has no bearing upon our circumstances here.

We do not come within the rule in the Goldman case or even, if your Honor please, the On Lee.

In the Goldman case the Minifon instrument was on the outside of the building, and your Honor will recall that that was a wartime case and the reasons of national security were among those which impelled the holding at that time.

In On Lee, there was a slight variation in that case. The defendant, On Lee, was visited by a friend and associate whom he invited upon the premises. It was upon the rationale that in that case there was no intrusion, there was no trespass, that the court held as it did.

But, interestingly enough, more recently, since On Lee, in Lopez, a majority of the court indicated that were On Lee to be presented now, its disposition would be different.

In Lopez, your Honor will recall that in that case the defendant invited the revenue agent upon the premises and there, while the agent was armed or clothed or supported by a Minifon, there was a conversation dealing with

a purported bribe or an attempt to bribe, and that was the gravamen of that complaint.

Now, one other point. In Silverman the court made it clear that where there is a trespass or an intrusion, the evidence is inadmissible and it must be suppressed.

And Mapp against Ohio, extending the principle of the application of the Bill of Rights to the states through the Fourteenth Amendment, imposes upon the courts of the states and, with all respect to your Honor, upon your [fol. 84] Honor, the obligation to determine, if the facts so show, that this evidence was obtained, in light of the concession by the District Attorney, it being the only evidence in the case, without the consent of the defendant, that it constitutes a trespass, an intrusion upon his rights, an unlawful invasion, and repugnant to the provisions of the Fourth and Fifth Amendments to the Constitution, and all we are asking your Honor to do now on this branch of the motion is to suppress such evidence.

The Court: Mr. Brill, Mr. McKenna.

Listen to what you said that Silverman holds.

(Thereupon, the Court Stenographer read the following:

"In Silverman, the court made it clear that where there is a trespass, or an intrusion, the evidence is inadmissible and it must be suppressed.")

The Court: "Without warrant." You left that out.

Mr. Brill: With or without warrant, it is my view.

The Court: One moment. Did it say "with or without warrant"?

Mr. Brill: The Court used the language "warrant," but I am saying to your Honor "without warrant"; I am saying to your Honor that "without warrant" can only mean without a search warrant.

The Court: In any event, those were the significant words which you omitted when you said that Silverman had a particular holding, which you related in the record; you omitted the words "without warrant."

Mr. Brill: And I think this is where the confusion arises, because, as I read it and as I read the cases decided by

[fol. 85] the Supreme Court, there is no basis, in the light of our constitution, for any warrant merely to obtain evidence. Consequently, I think that that language is of no materiality in the disposition in this case or even in the Silverman case.

The Court: So that, even if the Court equates the expression "without warrant" with "court authorization," nevertheless you feel that the statute as such which authorizes this unlawful intrusion or this intrusion is unconstitutional.

Mr. Brill: It is certainly repugnant to the Fourth and Fifth Amendments to the Constitution.

ARGUMENT OF MR. McKENNA

Mr. McKenna: Your Honor, in weighing the question of law that is being presented to you, the People would like to bring to your attention some of the background of this particular matter, so that you can see that, when these eavesdropping orders were obtained, they were obtained pursuant to an investigation in which the only means that the District Attorney had open to him to obtain sufficient evidence to warrant indictment was the use of an eavesdropping device.

In January of 1962, Ralph Panzini came to the District Attorney's office with a complaint of oppression by the State Liquor Authority. Agents of the State Liquor Authority had walked into his bar and grill and seized his books and records. Mr. Panzini believed this to be a reprisal for a situation that had occurred two years previously in the obtaining of his liquor license, when Mr. Panzini had agreed to transmit a bribe to the State Liquor Authority and, upon the obtaining of his liquor license, had refused then to part with the money.

Mr. Panzini was referred to me by Mr. Scotti and, in going ahead with the investigation with Mr. Panzini, I [fol. 86] went back to the files in the District Attorney's office to look up complaints we had had against the State

Liquor Authority. And the files were replete with letters and complaints that the District Attorney's office had received from various people who had been in touch with the State Liquor Authority and had been forced to pay tribute for the privilege of selling liquor in the State of New York.

We sent Mr. Panzini to see Mr. Klapper and, as your Honor can see from the exhibit which we have offered for identification, Mr. Klapper spelled out the situation that was then prevailing, wherein Mr. Panzini was required to go through certain attorneys in order to transmit the bribe money to the State Liquor Authority. And Mr. Panzini was asked by Mr. Klapper for the sum of \$10,000 in order to obtain a liquor license in the Broadway area.

Mr. Klapper made it quite clear to Mr. Panzini that he was the exception, that Mr. Klapper was dealing with him, who was not an attorney; and this was the thing that confronted the People in the beginning of this investigation, where a group of attorneys were acting as, in effect, a buffer for public officials and accepted from licensees and prospective licensees sums of money, which then were to be transmitted to the State Liquor Authority. And with that sort of buffer in effect, the District Attorney would be stymied in the obtaining of legal evidence in order to indict the public officials who were exacting this tribute.

But Mr. Panzini's conversation, that he obtained with Mr. Klapper, gave us the weapon. The weapon that the District Attorney was employing was not being used against private citizens in violation of their constitutional rights. In this situation the District Attorney was at-[fol. 87] tempting to protect the public from oppression by a public agency, a New York State agency that had at its disposal investigators, a legal staff, and a whole body of people, which they, in turn, were using to tie up and to exact tribute from the liquor industry of the State of New York; and that, in fighting this official oppression, the District Attorney was forced to resort to this very unusual means, namely, the use of an eavesdropping device. And, as your

Honor can see from the orders that the People have introduced, it was with sufficient, in fact, overwhelming, evidence that we went ahead in obtaining the orders for the eavesdrops that we installed in the offices of Harry Neyer and Harry Steinman.

So we are not talking in a vacuum when we talk about eavesdropping devices here. Here we had oppression by a state agency, oppression which was notorious, from the files of the District Attorney's office, and then later on from conversations which I had with private attorneys, all of whom said, "We certainly have been waiting for the District Attorney to do something about this." It got so widespread that nobody could practice with that particular agency. It was a notorious condition that existed, and time and again the District Attorney's office had attempted to penetrate this scheme, this conspiracy that had been carefully constructed by lawyers and public officials to protect themselves from law enforcement agencies of our type and to screen their nefarious activities from the use of the prosecutor's weapon and from eventual indictment and trial.

And thank God for Mr. Panzini, an angry man, who came in and was willing to cooperate with the District Attorney's office and jeopardize the liquor license he then had.

[fol. 88] And Mr. Panzini then went forward and gave us the instrumentality by which we were able to penetrate and get into the heart of this conspiracy.

So that the eavesdropping was used in a very serious investigation. We were not eavesdropping upon bookmakers or upon pornographers. We were eavesdropping in order to stop oppression and corruption within a public agency, which the public had no weapons to fight.

It was only with the use of the District Attorney's office and these eavesdropping devices that a weapon was devised to correct the condition that was then prevailing; and since that time, since this investigation, your Honor is well aware of the results. There has been an entirely new regime installed in the State Liquor Authority and corrective

legislation has been passed removing much of the trivial legislation that then gave the State Liquor Authority the means whereby they could, in effect, oppress the public that was trying to sell liquor.

That brings us, then, I think, to the constitutionality of the means whereby the District Attorney's office penetrated and broke up this conspiracy.

The New York State legislature in 1957 enacted legislation authorizing eavesdropping devices; and as your Honor, I think, can obtain by a reading of the legislative documents accompanying the legislation that was recommended to the Governor, the legislature was quite well aware of the fact that eavesdropping necessarily involved law enforcement and the legislature was also very well concerned that in the process of regulating eavesdropping they did not infringe in any way upon law enforcement officers' being able to use these eavesdropping devices. So that on the whole issue of physical intrusion the legislature [fol. 89] was quite well aware of the fact that, when they authorized the District Attorney or the police officer to obtain a court order for an eavesdropping device, they were, in effect, authorizing that District Attorney or that police officer to intrude into the premises in question in order to install that eavesdropping device, which brings us down to the question of whether this statute, duly enacted by the State of New York, is constitutional under the laws of the United States.

It is a twofold argument. I shall deal with, No. 1, the question of the Silverman and the Lopez cases; Mr. Goldstein, my associate, will deal with the question of whether there can ever be a court authorization for the obtaining of evidence.

But in the Silverman and Lopez cases, which are two of the cases dealing with eavesdropping—Silverman, a case employing a physical intrusion, and Lopez, a case not employing a physical intrusion, but the dissent in the Lopez case dealing with the question of eavesdropping, both of them were quite well aware of the necessity for warrants

and they were dealing with warrants. Both Douglas and Brennan, who are traditionally in the majority on the question of eavesdropping, who were in the majority in the Silverman case, who were in the minority in the Lopez case, were saying that, in effect, "We haven't seen any court orders here and we are not going to speculate whether a court order can be drafted in the situation that is presented to us. The federal agents have not obtained court orders, so that we are passing upon in these two cases the fact that, without court orders, we are not going to permit eavesdropping. We are not going to pass on the situation where eavesdropping has been authorized by previously obtained court orders."

[fol. 90] Here is the balance that must obtain in any situation like this—weighing constitutional rights against invasion of privacy under the Fourth Amendment against the needs of the state and for state officials to be able to combat crime and oppression by a state agency, and being able to combat corruption in a state agency. It is the weighing of these two. And in this particular instance the District Attorney of New York County obtained the evidence that went to a Justice of the Supreme Court of the State of New York. We presented our evidence to that judge; we told him what we were looking for; we told him the conversations we were attempting to obtain and we related to him the evidence, which I submit is adequate for the obtaining of an eavesdropping device; and, weighing that, then I say we have met the test imposed under the United States Constitution for previous authorization in that particular matter; and under the Silverman and Lopez cases, the eavesdropping devices which we installed pursuant to court order are legal.

Now, Mr. Goldstein, I think, will deal with the question of evidence.

ARGUMENT OF MR. GOLDSTEIN

Mr. Goldstein: If your Honor please, as my colleague, Mr. McKenna, has so aptly stated, the device of electronic eavesdropping is an important weapon in the prosecutor's and law-enforcement arsenal against crime, especially the type of crime which is conducted in a clandestine manner, such as a conspiracy, which is so charged in the indictment before your Honor.

Now, the issue of electronic eavesdropping is a very interesting issue for the public, for members of the bar, and the judiciary, not only because of the normal curiosity into mechanical devices of most of the people in the world, but [fol. 91] because of the important, significant factors electronic eavesdropping present to law enforcement, and for the same reason defendants and prospective defendants and members of the criminal community are very anxious to prevent law-enforcement prosecutors from using this type of evidence.

Now, recently, as your Honor well knows, the issue has come up in several cases. The Golly case, People against Golly, was a case or motion before your Honor, but there only procedural grounds were brought into play.

In two other recent cases, People against Neyer and People against Osterman, the substantive issue of electronic eavesdropping was brought into play by the arguments of defense counsel and the prosecution.

Now, in the Osterman case, after arguments by the defense, Mr. Justice Sarafite of this court on April 1, 1964, held that section 813-a of the New York State Code of Criminal Procedure, which authorizes electronic eavesdropping pursuant to a court order, is presumptively constitutional at least at the trial court level.

Mr. Goldstein (Continuing): He based his decision in that case on Supreme Court holdings, including the Silverman case.

Now I take it that Mr. Brill contends that evidence obtained by electronic eavesdropping is inadmissible even when done under the authority of the State Court order,

if it is accomplished by means of a physical intrusion within a constitutionally protected area such as an office or the privacy of a home. He urges, further, that any State statute purporting to authorize electronic eavesdropping is unconstitutional because it's a violation of the Fourth Amendment, to search for mere evidence or in- [fol. 92] criminating statements, as opposed to contraband, fruits or instrumentalities of crime. He makes that distinction.

However, it's difficult to reconcile his arguments because they are based on a circuitous course of reasoning.

Furthermore, a careful examination of the leading United States Supreme Court cases on the subject leads to a contrary result.

The People cite the very same cases that Mr. Brill cites. On the one hand, Mr. Brill urges the Court to adopt a broad and liberal interpretation of the Fourth Amendment, as the Supreme Court did in the Silverman case, in order to rule on this motion to suppress evidence of an intangible nature, conversations. An unrealistic view of the language of the amendment would lead us to the result of the Olmstead case and take intangible type of evidence out of the purview of that section of the Constitution.

However, once urging that incorporeal evidence can be the subject of a search and seizure within the meaning of the Fourth Amendment, for the apparent purpose of denying its admissibility under certain circumstances, he then argues that it can never be constitutionally seized because it is by its peculiar nature self-incriminatory or mere evidence rather than a contraband, fruits or instrumentalities of crime, which are the traditional subjects of a search and seizure.

The People contend that having expanded the literal meaning of the Fourth Amendment to realistically accord with current scientific and electronic developments, the Supreme Court also expanded its meaning, that is, the meaning of the Fourth Amendment, to permit the obtaining of [fol. 93] the very evidence which it suppressed, of course protected by certain basic safeguards such as a court order

or warrant, having certain specific requirements and based upon oath or affirmation of an affiant.

And we join the defendant in citing the Silverman case as the leading case on this subject, but with a different emphasis, of course.

Now, Mr. Justice Stewart, who delivered the opinion of the Court, stated, in part, and I quote, that "... the eavesdropping was accomplished by means of an unauthorized physical 'intrusion' into the premises occupied by the petitioners." The word "unauthorized" I wish to emphasize to the Court, because later there is some discussion about a warrant.

I think it's erroneous to equate the word "trespass" with every physical intrusion or entry into this so-called constitutionally protected area. If there is a warrant, the People contend that it's an authorized intrusion. The right of privacy is not absolute, as the Fourth Amendment so designates in the Constitution. People's homes can be entered, with the requirement that there be a search warrant, that a magistrate or a judge stand between the police officer and the privacy of the man's home. That's the basis of the argument. Is there a warrant? Is the warrant based upon probable cause, and so forth? Not the actual location of where the search is made, because if you follow that to its logical conclusion, I suppose Mr. Brill would have to concede that if eavesdropping evidence or evidence obtained by the method of eavesdropping were secured in an area not constitutionally protected, such as a public restaurant or such, there would be no requirement for a warrant and [fol. 94] it could be seized; but then he is conceding that the so-called mere evidence can be seized under certain circumstances, if it's not within a certain physical location.

And the Court went on in the Silverman case, Mr. Justice Stewart, saying that "This Court", and I quote, "has never held that a Federal officer may, without warrant and without consent, physically entrench into a man's office or home, there secretly to observe or listen, relate at the man's subsequent trial what was seen or heard."

Mr. Brill would have this Court hold that the requirement of consent of the person whose home or office is invaded is necessary, and only consent, and the People do not go along with that interpretation of the Silverman case.

Mr. Douglas, in his concurring opinion, pointed out that the absence of the warrant was the real danger influencing its decision, at Page 512 of the decision.

And, by the way, your Honor, rather than waste the time of this Court, I had submitted a memorandum of law on this very subject, on the substance of this issue, in the Neyer case, and I would be very happy to supply the Court with a copy of that memorandum, and also Mr. Brill.

Mr. Brill: Thank you.

Mr. Goldstein: In the other cases, in some of the other cases that the Supreme Court have come down with, Goldman, Lopez, On Lee, and so without warrant or consent seems to be the important language that the Judges refer to. They don't talk about consent alone. In fact, in the Lopez case Mr. Justice Brennan, who was joined by Mr. Justice Douglas and Goldberg in the dissent, stated that, "The Fourth Amendment does not forbid all searches, but [fol. 95] it defines the limits and conditions of permissible searches; the compelled disclosure of private communications ought equally to be subject to legal regulation."

The implication is clear that a State statute and a court order is what the Court suggests to stand between the police officer and the privacy of the individual.

In fact, Mr. Justice Brennan goes on to say, Page 465 of that opinion (Lopez), and I quote, "But in any event, it is premature to conclude that no warrant for an electronic search can possibly be devised. The requirements of the Fourth Amendment are not flexible or obtusely unyielding to the legitimate needs of law enforcement. It is at least clear that the procedure of antecedent justification before a magistrate that is central to the Fourth Amendment could be made a condition precedent of lawful electronic surveillance."

Now, on the question of mere evidence, the contention of the People is that conversations obtained by electronic eavesdropping, especially in the case of a criminal conspiracy, are more than mere evidence. They are the very, very means and instrumentalities of committing the crime of conspiracy, and therefore not subject to a rule which would hold that mere evidence is not able to be searched for by a search warrant, that it has to be something else.

In addition to that, the Federal cases are not clear, as to whether the rule of mere evidence and self-incriminatory statements apply under the Fourth Amendment or the Fifth Amendment or an interplay of both.

As an example of current statutes which deal with evidence, New York has a statute which is recent, under the search warrant statutes, which provide for the searching [fol. 96] and seizing of mere evidence, and the New York statute is based upon a California statute which has been in existence for a number of years and has never been successfully constitutionally attacked.

But the People contend, however, that conversations of a conspiratorial nature are not mere evidence. They are instrumentalities and they are the means of committing crimes, and they are the very instrumentalities and means of committing crimes in this very case before the bar of justice here today.

And I will present a copy of this memorandum to the Court and to Mr. Brill.

REBUTTAL ARGUMENT OF MR. BRILL

Mr. Brill: Without entering upon a complete rebuttal with respect to the very able arguments presented by Mr. McKenna and Mr. Goldstein, with which essentially I am not in agreement, I would like to say that this case differs from every case which has come before this Court or before your Honor.

In all of the other cases there was absent the element which, concededly, is present in this case, that all of the evidence upon which this prosecution is based and which

was obtained through leads which furnished other evidence was all obtained through the use of eavesdropping equipment, pursuant to these orders under Section 813-a.

In the Osterman case, for example, there was no showing of any facts that the evidence in that case was so obtained.

In the Neyer case, as I think in another case, it was held that—and I think, as your Honor held in the Golby case—it was held that quite apart from other considerations, the motion was prematurely made and that the rights of the [fol. 97] defendants would not be prejudiced if it were raised in the Trial Part before the trial Court, rather than in Part XXX.

None of those facts or any of those rules of law have any application to the matter before your Honor for consideration. In this case we are within the four square limits of evidence and leads to other evidence, all of which was obtained by means of eavesdropping devices.

I would like to have an opportunity to furnish your Honor with a further memorandum, after I've read the transcript of today's proceedings, and I would try to have it for you tomorrow morning, sir.

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Motion to Suppress Trial.

October 6, 1964.

Hearing Continued.

October 6, 1964.

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DENIAL OF MOTION TO SUPPRESS

The Court: All right.

The defendant has heretofore moved in open court for the suppression of certain evidence identified on oral argument and for a dismissal of the indictment. After due deliberation, the motion is denied, with an appropriate excep-

tion to the defendant. The Court will file a memorandum decision and a copy will be given to counsel.

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Mr. Brill: I think we ought to correct the record with respect to some of these exhibits, Judge, with your Honor's permission.

[fol. 98] We find that Exhibit 2-D marked in the hearing on the motion to suppress yesterday is a duplicate of the order in Exhibit 2.

We find that Exhibits 2-A and 2-B are duplicates of Exhibit 2-C, and that 2-F is a duplicate of 2-E.

And Mr. McKenna and I have stipulated that Exhibits 2-D, 2-A, and 2-B and 2-F may be withdrawn.

Mr. McKenna: Right.

Mr. Brill: Your Honor, we find that exhibit marked 1-F is a duplicate of 1-E, and we stipulate that it may be withdrawn.

Mr. McKenna: And I will, if I may, repeat, your Honor, the exhibits just for the record so that the record is clear.

Exhibit 1 is an order and affidavit of April 5, 1962.

Exhibit 1-A is an order and affidavit of June 4, 1962.

Exhibit 1-B is an order and affidavit of July 20, 1962.

Exhibit 1-C is an order and affidavit of September 10, 1962.

Exhibit 1-D is an order and affidavit of November 8, 1962.

And Exhibit 1-E is an order and affidavit of January 7, 1963.

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Exhibit 2 is an order and affidavit of June 11, 1962.

Exhibit 2-C is an order and affidavit of August 2, 1962.

Exhibit 2-E is an order and affidavit of September 10, 1962.

Exhibit 2-G is an order and affidavit of November 8, 1962.

[fol. 99] And Exhibit 2-H is an order and affidavit of January 8, 1963.

These shall be, then, the exhibit numbers for the purposes of this proceeding.

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Transcript of Trial—October 6, 1964

Before: Hon. Mitchell D. Schweitzer, J., and a Petit Jury.

APPEARANCES:

For the People: Jeremiah B. McKenna, Esq., and David A. Goldstein, Esq., Assistant District Attorneys.

For Defendant: Joseph E. Brill, Esq., and Bernard J. Levy, Esq.

Mr. McKenna: If it please your Honor, the People move the case of The People of the State of New York against Ralph Berger for trial.

[fol. 124]

OPENING ON BEHALF OF THE PEOPLE

Mr. McKenna:

The first in point of time is the Playboy Club. The People will show that in the spring of 1960 Arnold Morton, the operations manager of the Playboy Club, was working in his father's restaurant known as Morton's, in the City of Chicago, in the evening. Mr. Morton was a part-owner of that restaurant. This was in addition to his ordinary duties at the Playboy Club.

We will also show that Ralph Berger was an occasional diner at that club and had a passing acquaintance with Arnold Morton. And one evening in the spring of 1960 Ralph Berg came to Arnold Morton and told him that the Playboy Club was going to have serious trouble getting its liquor license in New York.

[fol. 125] Now at this time the Playboy Club had opened in Chicago the first of a projected chain of Playboy Clubs, and Playboy Club was an outgrowth of the Playboy magazine which had been publishing for several years, and the two were closely interconnected. Many of the gimmicks that were employed by the magazine were transferred over into the club, and the club had sent out a mailing to the subscribers of Playboy magazine, asking them to purchase a key for twenty-five dollars which would entitle them to go into the Playboy Club in Chicago and, of course, the Playboy clubs that were going to open up through the country, and Playboy Club had represented, in the course of this mailing, that they intended to open up in New York. Other cities that were projected were Miami, Boston, et cetera.

So that it was against this background that Ralph Berger first approached Arnold Morton.

Morton's reply to this was, "I don't see why we're going to have any trouble. We run a legitimate operation."

A short time later, the People will show, Ralph Berger again approached Arnold Morton, at Morton's restaurant, and informed him that in a very short time he would be entertaining the liquor Commissioner from New York, and Morton said, "Fine. Why don't you bring him over to the club and see how we operate?" And Berger said he would try. And Playboy arranged for a key to be left at the door of the Chicago Club in case this liquor Commissioner should arrive.

A short time after that, Ralph Berger again approached Arnold Morton. Meanwhile, nobody had arrived at the Chicago Playboy Club and used that key that had been left there. Ralph Berger again approached Arnold Morton and [fol. 126] said to him that the Commissioner was very upset with this type of operation. And he then represents to Arnold Morton, as the People's evidence will show, that Commissioner Epstein tells—told him that it was going to cost Playboy Club fifty thousand dollars to get their license in New York.

Arnold Morton expressed amazement at the figure. Whereupon, the People's evidence will show Ralph Berger says, "Gaslight Club paid sixty thousand dollars and they're not out of the woods yet."

Morton told Berger he would have to talk to his associates.

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A short time later, the People's evidence will show, Morton informed Berger that Playboy was willing to explore the situation, and Berger at that time said he would try to arrange a meeting for Morton with Commissioner Epstein in the City of New York.

The People's evidence will further show that Morton travelled to New York with Ralph Berger, and in the lobby of 270 Broadway, the offices of the New York State Liquor Authority, Arnold Morton was introduced to Commissioner Epstein by Ralph Berger.

A short time after that, the People will further show, that Playboy Clubs retained Hyman Siegel as the attorney for their liquor license application. Arnold Morton cannot remember who recommended Hyman Siegel to the Playboy Clubs, but in any event, Hyman Siegel was retained on their liquor license application.

And then; sometime in the fall, the People's evidence will show, the fall of 1960, Arnold Morton and Ralph Berger travelled to New York and conferred with Hyman [fol. 127] Siegel in the offices of a Chicago attorney in the Essex House in New York County.

Here again, Playboy Club encountered certain difficulties, and these difficulties ran throughout the remainder of the year 1960, and the People's evidence will show that the difficulty that Playboy Club encountered was in the key concept; and this is the theme that runs throughout this particular story, namely, it is this: There are two types of liquor licenses being debated in the Playboy situation. One of them is what is known as the "R. L." a restaurant liquor license, and under that license the New York State Liquor

Authority maintained, through Commissioner Epstein, you had to be open to the public. You cannot exclude anyone from your restaurant, other than the fact he might be disorderly or what have you.

Now, a second type of liquor license that would be granted by the New York State Liquor Authority was a private club license, whereby the New York State Liquor Authority would grant you the authority to sell liquor to the members of your club and you could exclude from the club non-club members. But in order to obtain a private club license in the New York State Liquor Authority, you had to be what is known as a not-for-profit organization. In other words, any profits received from the course of the sale of liquor in the private club had to be retained within the club and it wasn't supposed to be put into the pockets of any of the officers or the owners of the club.

Playboy was a private commercial company and it was in the business of making profits. So that they did not want a not-for-profit club license. They just could not fit such an operation into their corporate structure. Also, they [fol. 128] would have tremendous tax problems if they tried to open up a not-for-profit club and siphon off in some way the profits from the liquor.

And so Hyman Siegel, we will show, debated back and forth with the officers of the Playboy Club over this particular type of operation. Ralph Berger figures in the picture, also.

And the People's evidence will show that in January of 1961 two of the officers of the Playboy Club traveled to New York County to attempt to resolve this dilemma. They were Hugh Hefner and Victor Lowmes. And in January of 1961 these two men sat down with Commissioner Epstein in his office and attempted to work out a solution.

Meanwhile, Playboy Club had encountered the same difficulties in Chicago and had fought the case through the courts and had won the decision. The Playboy argument was, "Granted we demand that you own a key in order to enter the Playboy Club. However, anyone can buy a key.

All he has to do is put up \$25. It's in the nature of a cover charge. We don't care who you are or what you are. If you give us \$25 and your credit rating is good, we will sell you a key and you will be admitted to the Playboy Club. If your credit rating isn't good, we will still sell you a key for \$25. However, you have got to pay cash for your drinks."

On that argument, Playboy said they, in effect, were open to the public. They just required this initial charge in order to enter the Playboy Club.

The People's evidence will show that in that January meeting in 1961 there just could not be any solution. The officers of the Playboy Club showed the Chicago decision to Commissioner Epstein, who rejected it out of hand as not being the law in New York; and Hefner and Lownes [fol. 129] came back from that meeting determined that they were going to fight the case through the courts.

A very short time thereafter Ralph Berger came to Arnold Morton and told him that Commissioner Epstein had said to him (Ralph Berger) that Morton, Hefner, and Lownes were a bunch of boy scouts; he was very upset at the time and, as a matter of fact, he didn't want to have anything to do with them any more. Arnold Morton replied, "That's fine with us. We have decided to fight the matter through the courts." And so at that posture they broke off relations with Ralph Berger.

In March of 1961, Hyman Siegel returned to Playboy Club the \$5,000 retainer he had received from them in November of 1960.

A short time after that, the People's evidence will show, Berger returned to Arnold Morton and said, "Listen, I'm entitled to a little compensation for all my services in that particular transaction. I did go to New York several times. I was constantly in communication with Commissioner Epstein. I'm entitled to some recompense."

Arnold Morton says, "Forget it."

The amount initially asked for is something in excess of \$5,000. However, the corporate management of Playboy

eventually decides to give Ralph Berger some money. The reason for this decision, the People's evidence will show, was that, since they were going to hit the SLA head on and fight this case through the courts, they wanted to remove as many irritants as possible from the scene.

Now, at this point, the People's evidence will show that Playboy Club was out of the net. However, shortly thereafter, we will show that Ralph Berger returns to Arnold Morton and says, "Look, I have Commissioner Epstein [fol. 130] smoothed down and I have got somebody who is very big in New York and who thinks he can help you. He is the chairman of the New York State Republican Party, L. Judson Morhouse, and he wants to see you."

Arnold Morton, the People's evidence will show, agrees to accompany Ralph Berger to meet L. Judson Morhouse. We will further show that before Arnold Morton went into the offices of L. Judson Morhouse in New York County, Ralph Berger said to him, "Listen, the original deal with Epstein for \$50,000 is still on, but you are going to have to make your own deal with Morhouse."

Morton went into Morhouse's office, accompanied by Berger and Richard Conlan; and in the office Morton sat down and talked to Morhouse. Morhouse said to him, "I understand you are having trouble with your liquor license. I think I can help you." Morton explains to him the problem that Playboy Club is encountering in obtaining a liquor license open to the public, yet they still want to sell keys and exclude the public.

Morhouse represents to Morton, "Well, if we can't work it out with Epstein, don't worry. He is up for retirement soon and I'll appoint the next chairman of the New York State Liquor Authority, and (he says), if that doesn't work, we can always arrange to have legislation to change the laws."

Morton goes back to Chicago and the People's evidence will show that at that point Playboy Club capitulated.

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[fol. 134] ARNOLD J. MORTON, residing at 601 East 52nd Street, Chicago, Illinois, called as a witness in behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct examination.

By Mr. McKenna:

Q. Mr. Morton, what is your occupation?

A. I'm the vice-president and operational director of Playboy Clubs, International.

Q. How long have you been associated with the Playboy Clubs?

A. Since its inception, about five and a half years.

Q. Could you give us your background, which led to your connection with the Playboy Club?

A. Well, my father was in the restaurant business. I joined him, after getting out of service. I opened up my own place. In fact, I opened up three places previous to [fol. 135] joining Mr. Hefner. I met Mr. Hefner and Mr. Lownes in a particular operation I owned in the near North Side of Chicago.

Q. What is the name of your father's restaurant?

A. Morton's.

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Q. Now will you please describe your duties as operations manager for Playboy Club?

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A. The first step in development of a Playboy Club is location. I inspect the individual city for the site, negotiate for leases, licenses. We naturally have attorneys involved in these particular areas. We then go into design, concept, food and beverage policies. I'm in contact—I have a promotion department, basically a design department, an operational department, and a promotional department.

Q. Now, in 1960, early in 1960, how many Playboy Clubs were in operation?

A. We opened up the Chicago Playboy Club in 1959. In '60 we had—there was—our first club was open and we were working in three other cities.

Q. Now, in 1960, were your duties as operations manager, which you have just described, the same duties?

A. Well, I still was working—my father and I are in partners in the restaurant at 5600 South Shore Drive, and I was spending a certain number of evenings at my father's restaurant in conjunction with, I was actually running the one Playboy Club as the general manager. I have divorced myself from the actual individual running of the clubs because we now have ten. I was spending a certain amount of time out of the city looking for locations and development of new areas.

Q. Will you please describe the operation of the Playboy Club, and I mean by that the over-all operation.

[fol. 136] The Witness: Well, the basic concept or outstanding merchandising facility was the sale of keys. We have created a private atmosphere of a private club for a large group of these so-called sophisticated and urbane males. Today we have over 300,000 members. Do you want to know the actual operation description of a club?

Q. No. How are members solicited for the Playboy Club?

A. The only way we solicit for membership is through direct mailing.

Q. Do you own any part of the Playboy Club?

A. I own 25 per cent of the stock of Playboy Clubs International.

Q. Can you tell us who the other owners of Playboy Club are?

A. Victor Lowmes, I believe, owns 23 per cent, and Mr. Hugh M. Hefner owns 52 per cent.

Q. Are the Playboy Clubs related to Playboy Magazine?

A. Well, Mr. Hefner owns 87 per cent of the magazine, and part of his stock is owned by the magazine. Playboy Clubs International is a separate corporation, but part of Mr. Hefner's stock is owned by the magazine and part of it is owned by himself.

Q. Do Playboy Magazine and the Playboy Clubs share the same executive offices?

A. Well, we have, yes. Basically, we have offices within the same building, but we try to break out separate sections of the building that Playboy Clubs International office in.

Q. Now, had you selected the site for the Chicago Playboy Club?

A. Yes, sir.

[fol. 137] Trial Continued.

100 Centre Street,
New York 13, N. Y.,
October 9, 1964.

Direct examination (Continued).

By Mr. McKenna:

Q. Mr. Morton, in the spring of 1960, did you have a conversation with Mr. Ralph Berger?

A. Yes, sir.

Q. Concerning Playboy going into New York?

A. Yes, sir.

The Court: * * * I would suggest that you first give us the place where this conversation allegedly took place.

You indicated that you spoke to the defendant sometime in the spring of 1960. Where?

The Witness: It was in Morton's Restaurant.

The Court: Where?

Q. Where is Morton's Restaurant?

A. Morton's Restaurant is at 5600 South Shore Drive, Chicago, Illinois.

The Court: Can you give us, to the best of your recollection, the approximate date when this conversation allegedly took place?

The Witness: I would say it was in the summer; if June is summer, I would say in June or July of 1960.

Q. Tell us what Mr. Berger said to you and what you said to Mr. Berger.

A. Mr. Berger told me that we were going to have serious problems in getting a liquor license in New York City.

Q. What did you say to Mr. Berger?

A. I asked him "Why?" I saw no reason for problems. [fol. 138] And he told me that, as I recall, he repeated himself that, "You are going to have serious problems in getting a liquor license."

The Court: * * * Was the word "Playboy" mentioned in this conversation?

The Witness: Very definitely. The Playboy Clubs would have a serious problem getting a liquor license in New York.

Q. After this first conversation, did you have a second conversation with Mr. Berger relative to Playboy Clubs going into New York?

A. Yes, sir.

Q. How soon after the first conversation did the second conversation occur?

A. I'd say two to three weeks.

Q. And where did this second conversation occur?

A. At Morton's Restaurant, 5600 South Shore Drive, Chicago.

The Witness: I would say in July.

Q. Now, can you tell us the substance of that second conversation with Mr. Berger?

A. Mr. Berger told me that he was going to be entertaining Commissioner Epstein, who is the liquor commissioner of the State of New York, in Chicago. I told him, "Well, that's great. If you have the opportunity, why don't you take the Commissioner to the Playboy Club in Chicago," because I felt that if he saw our operation, he would be delighted to have our club in New York. I told him that I would arrange for what we call a celebrity key, so that he can get into the club with the Commissioner.

Q. What did Mr. Berger say to that?

A. If they had the time, he would take the gentleman, the Commissioner, to the club.

Q. Did Playboy arrange for a celebrity key to be left in the Playboy Club should Mr. Berger and Commissioner Epstein want to visit it?

A. Yes, sir.

[fol. 139] Q. Was the key used?

A. No, sir.

Q. Now, did there come a third conversation after this with Mr. Berger relative to Playboy Clubs going into New York?

A. Yes, sir.

Q. When did that conversation occur?

A. I would say it was a week or two after the second meeting.

Q. Do you recall where that conversation occurred?

A. I believe that was also in Morton's Restaurant.

Q. Now, can you give us the substance of that conversation between yourself and Mr. Berger?

A. Mr. Berger told me that the Commissioner, Epstein, Commissioner Epstein came to Chicago. He was extremely upset by our mailings and so-called method of operation in New York. He also told me that he didn't have time to

take the Commissioner to the Playboy Club. At that time Mr. Berger told me that it will cost \$50,000—Mr. Epstein, Commissioner Epstein said it will cost \$50,000 to get a liquor license to open up in New York.

Q. What did you say when Mr. Berger told you that Commissioner Epstein said it would cost \$50,000 to get your liquor license in New York?

A. "Why? Why should we spend \$50,000 to get a liquor license?"

Q. And what did Mr. Berger say?

A. Mr. Berger told me that the Gaslight, it cost the Gaslight sixty thousand to get a liquor license and they still were having problems because they didn't go through the right channels.

Q. Did you have any further conversation with Mr. Berger at this time relative to your getting a license in New York?

A. Not at that time, sir.

Q. What did you do after Mr. Berger told you that it would cost \$50,000 to get your liquor license in New York?

A. I went back and discussed it with the principals of my company.

[fol. 140] The Court: Give us the entire conversation that took place, that occurred on that occasion.

The Witness: Mr. Berger told me the Liquor Commissioner, Mr. Epstein, had come to Chicago. He was most upset about our method of operation and our mailings that we were making into New York. Mr. Berger also told me he didn't have the opportunity to take the Commissioner to the Playboy Club because of prior commitments. Mr. Berger told me that Commissioner Epstein wanted \$50,000 to get us a liquor license. Mr. Berger told me that he was being taken care of or he was participating

in this \$50,000. That was about the gist of the conversation.

Q. After this discussion with your associates, what did you do?

A. A short time later, I again—I'd say a week or so—Mr. Berger contacted me and told me that Commissioner Epstein, he has set up a meeting with Commissioner Epstein in New York.

Q. Now, can you give us the place of this conversation with Mr. Berger?

A. I believe that was in my office.

Q. Would you say it was a week after, approximately, your discussion with your associate?

A. I would say approximately that time.

Q. Can you tell us how long after the third conversation you had this discussion with your associate?

A. Well, I had the discussion with my associate practically immediately after I met with Mr. Berger.

Q. Now, can you tell us where your office is?

A. My offices are at 232 East Ohio, Chicago, Illinois.

Q. Now, as a result of this fourth conversation with Mr. Berger, what happened?

[fol. 141] The Witness: Well, the substance of it was that he had set a meeting up for me. He was going to take me to meet Commissioner Epstein.

Q. Now, as a result of this fourth conversation did anything occur?

A. I went to New York with Mr. Berger. We flew to New York. He took me to Commissioner Epstein's office on 270 Broadway. I went into the lobby of the building with Mr. Berger and he excused himself for several minutes.

He came back shortly and told me: "Commissioner Epstein will be down shortly . . ."

Commissioner Epstein got off of the elevator. Mr. Berger walked over to the gentleman, brought him over to

me, introduced me to him, and Commissioner Epstein said: "I am sorry but I have a meeting and we will have to get together at a later date." That was my entire meeting.

It was a handshake with Commissioner Epstein.

The Court: What date was that, if you recall?

The Witness: It was in August, I am not—

The Court: Sometime in August of 1960.

Mr. McKenna: May I ask that this be marked for identification?

The Court: Mark it for identification.

(An airline voucher was marked "People's Exhibit 1 for Identification".)

Q. Let me show you Exhibit 1 for identification; does this help you to refresh your recollection in any way?

A. I would say it was August the 15th, based on what I see here.

Mr. McKenna: May I ask that this be marked People's Exhibit 2, for identification.

[fol. 142] The Court: Mark it for identification.

(A photograph was then marked "People's Exhibit 2 for Identification".)

Q. Now, Mr. Morton, I show you Trial Exhibit Number 2 for identification; could you tell me whose picture is in that photograph?

A. Commissioner Epstein.

Q. Is that the man that you met in the lobby of 270 Broadway?

A. Yes, sir.

Q. Now, after you had this handshake with Commissioner Epstein, did you have any conversation with Mr. Berger?

A. Well, Mr. Berger apologized for taking me to New York and shaking hands with this gentleman, with Com-

missioner Epstein, in the lobby, and he told me that he would set up another appointment and I would have an opportunity to talk to him at a later date.

Q. What happened after this meeting in New York, in the lobby of 270 Broadway, between you and Mr. Berger?

A. We returned to Chicago and that was pretty much the conversation, the fact that he did not realize the Commissioner had other plans and that he would set up another appointment for me.

Q. Did you have further discussions with Ralph Berger concerning Playboy's obtaining a liquor license in New York, after this meeting in the lobby of 270 Broadway?

A. Yes, sir.

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Q. Now, can you give us that conversation you had with Ralph Berger in your office in September of 1960?

A. The fact that the Commissioner was upset with our mailings, and our method of operation, our advertising of our method of operation. Mr. Berger—well, it is the next trip to New York—in one of these meetings in September Mr. Berger told me that we were going to New York to [fol. 143] meet a Mr. Hyman Siegel, a liquor attorney, to file for—that is the man to see in regards to filing for a liquor application.

Q. And did you go to New York and meet with Mr. Siegel?

A. Yes, sir.

Q. Do you recollect where you met Mr. Siegel in New York?

A. Well, to the best of my recollection, I had two meetings. One was in Mr. Siegel's office and one was in a Mr. Edward King's apartment at the Essex House.

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Q. On your first meeting with Mr. Siegel was Mr. Berger present?

A. Yes, sir.

Q. And on the second meeting with Mr. Siegel in the apartment of Edward King, was Mr. Berger present?

A. Yes, sir.

Q. Do you recall in point of time which meeting was first, the one with Mr. Siegel, alone, or the one with Mr. Siegel and Mr. King?

A. I am not—it is not clear which meeting was first, they were very close together.

Q. Can you place the month where these two meetings occurred?

A. I believe it was in October, or November.

Q. Did these meetings occur before Playboy purchased its location in New York?

A. Well, I know we purchased our location in New York, we bought our building in November.

Q. Do you recall the specific date?

A. The date of the purchase of the building?

Q. Yes.

A. No, I don't, I know it was in November.

Q. Do you recall if it was early in November, or late in November?

A. I am really not sure.

Q. Do you recall if the two meetings with Hyman Siegel occurred previous to the purchase of the building in New York?

A. I seem to remember that it was—I am really not sure if it was directly before or after the purchase.

[fol. 144] Q. Now, the first meeting that you had with Hyman Siegel in the presence of Ralph Berger, can you give us the substance of the conversation?

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The Witness: We were discussing liquor licenses and the method of filing for liquor licenses. There was the discussion that we would file as a "not for profit corporation", so that we could have the right to use our key. I felt that that was not the proper method, because we wanted to operate with a normal R and L, an R—we felt that we

would get ourselves involved in tax—we felt that we would get ourselves involved in tax problems with a “not for profit corporation”. “Not for profit corporation”, pays no income tax, no entertainment tax, and you have to filter the fund out in some devious ways so that you don’t have a profit making company.

I felt that the only direction to go in was to file for an R. and L. license, because that is what we had in Chicago and we found that to be perfectly legal, selling keys with an R. and L. license.

Q. Now, on your second meeting with Mr. Siegel, in the presence of Mr. King, can you tell us what was said at that meeting?

A. I would say the conversation was pretty much the same. It was the program we would follow and how we would file for our liquor license.

Q. Was Mr. Berger present at the second meeting?

A. Yes, sir.

Q. Now, on both of these meetings did Mr. Berger accompany you to New York?

A. I recall Mr. Berger going to New York with me.

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(An airline invoice was marked “People’s Exhibit 3 for Identification”).

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[fol. 145] By Mr. McKenna:

Q. Does that enable you to refresh your recollection as to the date of one of these two meetings between yourself, Mr. Berger, and Mr. Siegel?

A. Well, this check, this airline ticket, for Mr. Berger and myself, is dated October 29th, so I presume that was the date that we had our first meeting.

Q. So you can place at least one of the two dates on October 29th, 1960, is that correct?

A. Yes, sir.

Q. Now, in November of 1960, on the—in November of 1960 did Playboy purchase a building in New York?

A. Yes.

Q. And can you tell us where that building is located?

A. The building is at 5 East 59th Street.

Q. Had you anything to do with the location of that site?

A. Yes, sir.

Q. And how much did Playboy pay for the building at 5 East 59th?

The Witness: I think it was \$775,000.

Q. Were there any other expenses immediately related to the purchase of that building?

The Witness: Beside our cost of investigation and travelling and the real estate agent, we immediately went into architectural plans, which for this kind of a project—I know the architectural bill alone ran over \$300,000.

Naturally the dollars were not all spent the day we bought the building, but the actual architectural costs ran over \$300,000.

[fol. 146] Q. Now, did you have any meeting with Mr. Berger in December of 1960?

A. I had a meeting with Mr. Berger in December, yes, sir.

Q. Do you recall where that meeting occurred in December of 1960?

A. I believe in my office in Chicago.

Q. All right, can you give us the substance of the conversation between you and Mr. Berger on that occasion?

A. Mr. Berger set a meeting up with Commissioner Epstein in regard to Mr. Lownes and

.

The Witness: Well, may I interject something here? I had several meetings with Mr. Berger. I cannot tell you the exact dates, but I know the conversation was that the Commissioner Epstein was very upset, still extremely upset about the mailings we insisted on continuing in New York.

Then the following meeting Mr. Berger set up an appointment with the Commissioner, Mr. Siegel, Mr. Hefner and Mr. Lownes to go in and see the Commissioner Epstein.

Q. Now, did Mr. Lownes and Mr. Hefner go to New York to see Commissioner Epstein?

A. Yes, sir.

Q. Did they come back and have a discussion with you concerning their meeting that they had with Commissioner Epstein in New York?

A. Yes, sir.

Q. Do you know when they went to New York to see Commissioner Epstein?

A. In January.

Q. And that was 1961, is that right?

A. 1961.

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Q. Now, after your discussion with Victor Lownes and Hugh Hefner concerning this January meeting with Commissioner Epstein, did you meet with Ralph Berger?

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[fol. 147] A. Yes.

Q. Can you tell us where you met Ralph Berger?

A. In my office in Chicago.

Q. Can you place the time of that meeting with Ralph Berger?

A. I would say in February.

Q. February of 1961?

A. '61.

Q. Can you tell us the conversation between you and Ralph Berger in this February, 1961, meeting?

A. I told Mr. Berger we were very upset about the meeting that took place in New York. Mr. Lownes and Mr. Hefner tried to explain to the Commissioner our form of operation. Mr. Lownes continually asked Commissioner Epstein: "What is illegal about our method of operation?"

He could show no facts, he just kept saying: "It is illegal, your mailings are illegal."

After that meeting we felt that we were absolutely wasting our time with Mr. Berger and we could make no headway with the Commissioner. We had filed a court case and won a court case in the City of Chicago. That proved our method of operation was legal and right and we told them we will obviously have to go to court to prove that we can continue our mailings and operate in the way we have in Chicago.

Q. Did Mr. Berger say anything to you?

A. Mr. Berger told me the Commissioner was extremely upset with Mr. Lownes and Mr. Hefner. He used the terms that I still remember, "They acted like Boy Scouts, he does not want anything to do with them, he can't handle them."

Q. Did Berger say anything else at that meeting with you?

A. Well, I believe it was at this meeting where we decided to part company.

Q. Did you tell Mr. Berger that Playboy no longer wanted to do business with him?

A. That is correct.

[fol. 148] Q. Yes?

A. Mr. Berger in that meeting asked me for—it could have been that, or a meeting just a matter of days after

that—that he asked me for a figure that is not clear in my mind. I think it was around seventy-five hundred dollars, for his work, and time, that he had spent with Playboy.

I told him that I saw no reason, we had given him some expense money for his time, but I felt that I should discuss it with my associate.

Q. And was there a discussion concerning Ralph Berger's request for expense money?

A. Yes, sir.

Q. And was any decision made to give Ralph Berger his expense money?

The Witness: Yes, sir.

Q. Was any expense money paid to Ralph Berger for his services in 1960?

A. Yes, sir.

Q. How much?

A. I think it was twelve or fifteen hundred dollars.

Q. Was anything else given to Ralph Berger for his services in connection with his efforts on your behalf?

A. We paid Mr. Berger five thousand dollars at the point we were going to disassociate ourselves with Mr. Berger and the Liquor Commissioner.

Q. Are you able to remember approximately when you gave Mr. Berger the five thousand dollars?

A. I believe it was in May of 1961.

Q. Did you have a meeting with Mr. Berger in 1961 at which there was a discussion concerning your liquor license in New York?

A. I did.

[fol. 149] Q. Can you place the time of that meeting?

A. At about the time we parted company. I would say very shortly thereafter in May, Mr. Berger—I had a meeting with Mr. Berger.

Q. Can you tell us where that meeting occurred?

A. In Chicago, at my office.

Q. Can you tell us then, also, the conversation between you and Mr. Berger at this May meeting in Chicago in your office?

Mr. Brill: Now, if your Honor please, I object to it and—

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Mr. Brill: I object to the question on the ground that the witness has already testified that if, in the first instance, without conceding there ever was, a conspiracy had come into being, it certainly was terminated by this witness and his associates in May of 1961, at which time, in the language of the witness, he and his associates parted company with Mr. Berger, after they had paid for his services the sum of five thousand dollars at that time.

The indictment on trial before your Honor and this jury charges the commission of one conspiracy with respect to the Playboy Club, obviously, although I seriously contend that no conspiracy has yet been established. If ever there was one, it certainly was terminated in May of 1961.

The indictment in the case at bar does not allege that there was an interruption in the conspiracy, nor does it allege a second conspiracy beginning in or about May of 1961. It charges the existence of a continuous conspiracy from the commencement in the summer of 1960 until on or about December 7th, 1962, but by the testimony of this witness, again without conceding that there has been proof [fol. 150] of a conspiracy, it has been established before this Court that the conspiracy, if any, was terminated in May of 1961.

To offer proof now with respect to transactions following that date, after, as the witness put it, they parted company with Berger and paid him for his services up to that time, would do violence to the concept of law that you can

only be tried for one charge which has been set forth and not for charges which are not set forth in the indictment.

The Court: Objection overruled.

Mr. Brill: Now, if your Honor please, in view of your ruling, I am obliged to make a motion at this time for the withdrawal of a juror and the declaration of a mistrial, on the ground that the district attorney is now about to offer proof with respect to matter concerning a conspiracy which is not charged in this indictment.

The Court: Motion denied. You have an exception.

(Whereupon, the following proceedings took place on the record, in open court:)

The Court: (To the witness) You may continue.

A. Mr. Berger told me he has the liquor commissioner all smoothed out, that the number one man in New York wants to see me, Mr. Judson Morhouse, Mr. Rockefeller's aide, or head of the Republican party of New York.

Q. After this conversation with Mr. Berger, did you have a discussion with corporate management of the Playboy Clubs?

[fol. 151] A. Yes, sir.

Q. And after this discussion with your associates at the Playboy Club, did you have a conversation with Mr. Berger?

A. I agreed to go to New York with Mr. Berger and meet Mr. Judson Morhouse.

Q. Did you go to New York with Mr. Berger?

A. Yes, sir.

Q. Did you meet with Judson Morhouse?

A. Yes, sir.

Q. Now before you went in to see Mr. Morhouse, did you have a discussion with Mr. Berger?

A. Yes, sir.

Q. If I may, Mr. Witness, you've testified concerning a meeting in Chicago with Mr. Berger in which he first mentions to you the name of Mr. Morhouse.

A. Yes, sir.

Q. Now between that conversation and the actual visit to Mr. Morhouse, did you have a conversation with Mr. Berger?

A. I am not sure if I had another meeting or a telephone call, but I talked to Mr. Berger, and I agreed to go in to New York to visit Mr. Morhouse.

Q. Where were you when you had this conversation on the phone with Mr. Berger?

A. I was in Chicago, I am sure.

Q. Can you place the time of this conversation with Mr. Berger.

A. I would say May of 1961.

Q. Now before you went in to see Mr. Morhouse, did you have another conversation with Mr. Berger? Just answer yes or no.

A. Yes.

Q. Where did that conversation take place?

A. I think it took place on the airplane or after we landed in New York, before we got to Mr. Morhouse's office.

[fol. 152] Q. And then am I correct in saying that the time of this conversation is actually the day that you went to see Mr. Morhouse?

A. Yes, sir.

Q. Now can you tell us what Mr. Berger said in this conversation.

A. Mr. Berger told me the deal with Commissioner Epstein, the fifty thousand dollar deal with Commissioner

Epstein, is on. "You will have to make your own deal with Mr. Judson Morhouse." That was the gist of that conversation.

Q. Now when you went—

Mr. Brill: I move to strike the answer, if your Honor please, I'm sorry, I am a little late in making an objection to the question, but I didn't anticipate such an answer.

The Court: Your motion is denied, and you have an exception.

Q. Do you recall where you met with Mr. Morhouse?

A. I met at Mr. Judson Morhouse's office.

Q. Do you know the address that you went to see Mr. Morhouse?

A. I don't know the address, sir.

Q. Was it in Manhattan?

A. I would say it was in Manhattan, yes, sir.

Q. Who was with you when you went to see Mr. Morhouse?

A. Mr. Richard Conlan, formerly our general manager of the New York Club, Mr. Berger and myself.

Q. Was anybody with Mr. Morhouse when you arrived in his office?

A. Well, Mr. Morhouse was alone, but a gentleman walked into his office that he introduced me to and he left, so there was no one there during any of our conversations outside of the three of us and Mr. Morhouse.

Q. Are you able to place the date of this meeting with Mr. Morhouse?

A. I would say it was early in May.

Q. Now can you tell us what you said to Mr. Morhouse and what Mr. Morhouse said to you at this meeting.

[fol. 153] Mr. Brill: Now, if your Honor please, I have an objection.

(Whereupon the following proceedings took place on the record, at the bench, between the Court and counsel for both sides, but out of the hearing of the members of the jury:)

Mr. Brill: Now, if your Honor pleases, I object to this question, the answer to which I think I can reasonably say I anticipate, in view of the statements made by Mr. McKenna in his opening.

If my judgment is correct, Mr. McKenna seeks, by this question, to develop from this witness an answer which would tend to show what Mr. McKenna said, in substance, in his opening, as I synthesize it now, that Mr. Morhouse said, "Don't worry about Epstein. He's soon up for retirement. I will appoint the next Chairman of the S. L. A.", and so forth. I don't recall the rest of the language.

Unless Mr. McKenna will now represent to the Court that that is not the conversation which he seeks to elicit—

Mr. McKenna: That's going to be the conversation, Mr. Brill.

Mr. Brill: Then, in view of Mr. McKenna's concession, that this is the conversation he seeks to elicit from this witness, I press the objection, because I believe that what he is now doing is offering proof of another conspiracy not charged in this indictment, unrelated to the conspiracy with which we are now concerned on the trial of this indictment and, further, because this is the type of matter which is inflammatory and prejudicial and, in effect, constitutes a denial of the defendant's right to a fair trial. [fol. 154] The Court: (To Mr. McKenna) You want to be heard on this?

Mr. McKenna: I think your Honor has all the facts.

The Court: Objection overruled.

Mr. Brill: May I just go a little further.

In view of your Honor's ruling, and to avoid the necessity for my making a motion to strike at the end of the answer which we expect the witness now to give, may I

make such a motion at this time, and upon your Honor's ruling, make a motion for the withdrawal of a juror and the declaration of a mistrial, and take my exceptions to both of your Honor's rulings.

The Court: Your motions are denied.

You have an exception.

(Whereupon, the following proceedings took place on the record in open court:)

Q. Were you introduced to Mr. Morhouse at this meeting?

A. Yes, sir.

Q. Who introduced you to Mr. Morhouse?

A. Mr. Berger.

Q. Can you give us the substance of that introduction?

A. "Mr. Morton, from the Playboy Club, Mr. Judson Morhouse."

Q. Now at this meeting with Mr. Morhouse, can you give us the conversation that occurred between you and Mr. Morhouse, with Mr. Berger present, as well as Mr. Conlan.

A. Mr. Morhouse told me, "I'm sure that I can work out your problems." We discussed my problems.

[fol. 155] Q. Can you tell us what you told Mr. Morhouse about your problems?

A. That we were having problems—that the liquor commissioner was very upset about our methods of operation and the mailings that we insist on sending into New York. And Mr. Morhouse said, "Well, I think that I can work—we can work these things out." He mentioned the fact that Mr. Epstein was a very old man and that he might—he conceivably could be appointing the next liquor commissioner. He also told me it's a possibility, through the

Legislature, some of these archaic liquor laws should be changed.

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Q. Did you have a discussion of the type of license you wished to obtain in New York?

A. Yes, sir.

Q. Give us the substance of that discussion.

A. Well, I discussed with Mr. Morhouse the forms of licenses that were suggested to us, which were not for profit corporate licenses, but we felt that we should only take—we should file for an R & L license, and pretty much of the same conversation that I mentioned in regards to that—if you would like me to repeat, at that meeting—the discussion of the not for profit and having to have X number of members be filed with the State, and the avoiding of the taxes, the entertainment tax, the income tax. And he agreed. He thought that filing for an R & L would be sensible. I had a court ruling in Illinois, in the City of Chicago, that proved our method was completely legal and correct.

Q. Now after you outlined your problems to Mr. Morhouse, did you have any further discussion with Mr. Morhouse?

A. Well, Mr. Morhouse discussed several other areas. He felt there might be a possibility of his operating a string of gift shops within our clubs. * * * The fact is that [for 156] Mr. Morhouse asked for one hundred thousand dollar stock option in the Playboy Clubs and a twenty thousand dollars a year retainer. There's been some confusion on that. I thought it was as long as we were in business, * * *

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Q. Do you know—Did Mr. Morhouse tell you how long he wanted that retainer?

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A. It was at least for five years or longer.

Q. Did you say anything to Mr. Morhouse, in reply to these requests he made to you, in the presence of the defendant?

A. I told Mr. Morhouse that I naturally would have to go back to Chicago and discuss it with my associates. I was doubtful of the stock options and the clubs, and I told him but I'd have to go back and discuss it with the principals of the company.

Q. When you say "the clubs," you mean the gift shops? Is that what you are referring to?

A. The gift shop and the stock option, yes, sir.

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Q. Mr. Morton, I would like to direct your attention back to the year 1960. You said earlier today in your testimony that you had given Mr. Berger approximately \$1,200 in expenses before February of 1961.

A. Yes, sir.

Q. Did Mr. Berger ever give you a voucher or a bill outlining his expenses in 1960?

A. Yes, sir.

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(The Paper referred to was marked People's Exhibit 4 for Identification.)

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Q. Mr. Morton, I show you People's Exhibit 4 and ask you if you have ever seen it before.

A. It is my signature. Yes, sir.

[fol. 157] Q. Is that a voucher or a bill that you received from Mr. Berger in 1960?

Mr. Brill: Excuse me, but I am compelled to object.

The Court: I can't hear you, sir.

Mr. Brill: I am compelled to object, your Honor. He is characterizing that which is not in evidence.

The Court: Is that a paper that you received from the defendant in December of 1960?

The Witness: Yes, sir.

Q. Can you tell me what it is?

Mr. Brill: I object to that.

The Court: Are you offering it now?

Have you any objection?

It is now being offered in evidence.

Mr. Brill: Now, may I inquire on the *voir dire*, your Honor?

The Court: I see no necessity for interrupting the direct examination for an inquiry at this point.

Mr. Brill: All right.

The Court: Overruled.

Have you any objection to its receipt in evidence, sir?

Mr. Brill: I have, your Honor.

Mr. McKenna: I withdraw it.

Mr. Brill: I am disabled by reason of my inability to examine.

Q. Mr. Morton, if I can re-direct your attention, now we are back in 1961. After your first meeting with Mr. Morhouse, did you go back to Chicago?

A. Yes, sir.

Q. Did you have a discussion with your associates in Chicago concerning this meeting with Mr. Morhouse?

[fol. 158] Mr. Brill: Now, I object to that, if your Honor please.

The Court: I will allow it. Overruled.

You may answer yes or no.

The Witness: Yes, sir.

Q. After this discussion, can you tell us what occurred?

A. After the discussion, Mr. Lownes and I made an appointment with, to see Mr. Judson Morhouse in New York.

Mr. Brill: Now, if your Honor please, I move to strike the answer and I press the objection to the question in view of the answer.

The Court: Will you read it back, please.

(Thereupon, the Court Stenographer read the following:

"Q. After this discussion, can you tell us what occurred?

A. After the discussion, Mr. Lownes and I made an appointment with, to see Mr. Judson Morhouse in New York.")

The Court: Objection overruled.

Q. Did you and Mr. Lownes see Mr. Morhouse in New York?

A. Yes, sir.

Q. Did you have a conversation with Mr. Morhouse?

A. Yes, sir.

Mr. Brill: I object to this.

The Court: Overruled.

Q. Can you tell us what you said to Mr. Morhouse and what Mr. Morhouse said to you in this meeting between Mr. Morhouse, yourself, and Victor Lownes?

A. Mr. Morhouse said, stated, basically, the facts of the previous meeting which were he discussed his \$20,000-a-year retainer, he discussed the possibility of operating gift [fol. 159] shops within the Playboy Clubs, and he discussed the fact that he would like to purchase \$100,000 stock, he would like a \$100,000 stock option in Playboy Clubs.

Q. Now, what did you say in response to Mr. Morhouse in this regard?

The Witness: I explained to Mr. Morhouse that the operating of shops within the clubs to me seemed to be impossible, and that we were going into registration, and his name would have to be listed.

The Witness: The substance of the conversation, your Honor, was the fact that we felt we could not give Mr.

Morhouse stock options because we were going into registration and his name would have to be listed on the stock certificates; also the fact that we would, we saw no way how he could become involved in operating gift shops within the clubs. We did agree to his \$20,000-a-year retainer. That was the substance of the conversation.

Q. Did you meet Mr. Morhouse again? Just yes or no.

A. Yes, sir. ✓

Mr. Brill: May we have the date of that second meeting?

Q. Can you place the date of the second meeting with Mr. Morhouse?

A. The end of May, I would say.

Q. How soon after the first meeting with Mr. Morhouse did this occur?

A. A week, two weeks.

Q. Now, you say you had a third meeting with Mr. Morhouse, is that correct?

A. That is correct.

Q. And where did this take place?

A. This took place in our offices in Chicago at 232 East Ohio.

[fol. 160] Q. And approximately how long after the second meeting with Mr. Morhouse did the third meeting with Mr. Morehouse occur?

A. I would say about two weeks.

Q. And who was present at the third meeting with Mr. Morhouse?

A. Mr. Victor Lownes III, Mr. Robert Preuss, Mr. Hugh Hefner, and myself, and Mr. Judson Morhouse.

Q. And Mr. Morhouse. Can you tell us what was said at the third meeting with Mr. Morhouse in Chicago?

Mr. Brill: Just a moment, please. I object to that, your Honor, and if your Honor will indulge me just a moment—

Mr. McKenna: May we approach the bench, your Honor?

The Court: You may, sir.

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein, and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

Mr. Brill: Your Honor, I may be in error as to this, but it is my impression that one of these meetings, either the second or the third meeting, is outside of the bill of particulars and I can't find it. Perhaps Mr. McKenna can help me.

Mr. Brill: Yes, I have a copy of it here. Here is a copy of it.

Mr. McKenna: I have a copy.

Mr. Brill: I am not sure that they refer to—

Mr. McKenna: Yes, Count 11.

Mr. Brill: Overt Act 11?

Mr. McKenna: Yes, Overt Act 11.

Mr. Brill: Well, there is Overt Act 11 and it speaks of a meeting in New York County and not Chicago.

Mr. McKenna: I am sorry. You are right. You are right. You are right.

[fol. 161] Mr. McKenna: That is the second meeting.

Mr. Brill: That is the third meeting?

Mr. McKenna: No.

Mr. Brill: It has to be. You have already had two meetings in New York and you haven't had Preuss, and Mr. Preuss is said to be—You have already given us two meetings in New York and at neither one of them was Mr. Preuss present.

Mr. McKenna: I am not limited. I can put in other overt acts. I am not bound by the numbers that are recited here.

The Court: That is the law.

Mr. Brill: I think he is bound by the indictment and the bill of particulars, and if he offers anything else now—

The Court: Has there been a demand and the furnishings by the People of all of the meetings which the parties engaged in, which constitute, according to the People, overt acts in furtherance of the conspiracy charged in that—

Mr. McKenna: No such demand. We are asked for specific overt acts, your Honor, alluded—

The Court: I will state as a matter of law that the People are not precluded from establishing additional overt acts. The law says they need prove only one, but they can allege as many as they want and prove as many as they want.

Mr. Brill: But now they are proving or attempting to prove in addition to what they set forth in the indictment and the bill of particulars, and it is matter concerning which I had no advance information.

(At this point the proceedings at the bench were concluded and the following took place within the hearing of the jurors and the alternate jurors.)

[fol. 162] The Court: Read back the question, please.

(Thereupon, the Court Stenographer read the following:

“Q. Can you tell us what was said at the third meeting with Mr. Morhouse in Chicago?”)

Mr. Brill: Now, if your Honor please, I object.

Perhaps I better state the reasons of law at the side bar.

The Court: Haven't you already stated it in the record?

Mr. Brill: No, this is another objection.

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein, and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

Mr. Brill: My objection to this question goes to the fact that he is now attempting to prove a conversation had without the presence of the defendant, without having first established the existence of a conspiracy.

Mr. McKenna: As soon as this goes in, I will put the checks in.

The Court: I will allow it; overruled.

Mr. Brill: I respectfully except.

And can I have your Honor just for the record?

The Court: I am sorry.

Mr. Brill: I take it, your Honor denies my motion to strike the answer and my motion for the withdrawal of a juror and the declaration of a mistrial. I just wanted to get that clear on the record. Thank you very much.

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[fol. 163] (At this point the proceedings at the bench were concluded and the following took place within the hearing of the jurors and the alternate jurors.)

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Q. Mr. Morton, can you tell us what Mr. Morhouse said at this third meeting in Chicago?

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The Court: Sustained, strike out his answer as not responsive.

Q. Did anyone of the officer of Playboy Club talk about stock options with Mr. Morhouse?

A. I think we all—it was a general discussion and—

Q. Did anyone in particular that you recall talk to Mr. Morhouse about stock options?

A. I did, sir.

Q. What did you say to Mr. Morhouse about stock options?

A. I told him it would be impossible to give him stock options to the Playboy Club.

.

Q. Did Mr. Morhouse say anything when you told him that stock options were out of the question?

A. Now, I am not sure if we discussed the opportunity of him having options within the club, or the stock options, but it went to the other subject, whichever—I am not sure—sure of the—

Q. Of the sequence?

A. Of the sequence, but it was then brought up by Mr. Morhouse about the opportunity of operating shops, gift shops, in the Playboy Clubs.

Q. Did anybody talk with Mr. Morhouse concerning the opportunity of operating gift shops in the Playboy?

A. I did.

Q. What did you say to Mr. Morhouse?

A. In this meeting I explain to Mr. Morhouse it would be impossible for him to operate gift shops within a Playboy Club.

[fol. 164] Q. Now, was there anything else discussed at that third meeting in Chicago besides the gift shops and the size of the stock options?

A. I discussed his retainer of twenty thousand dollars per year.

Q. And what did Mr. Morhouse say when you discussed with him his retainer of twenty thousand dollars a year?

A. Mr. Morhouse told me how he would want it paid.

Q. How did Mr. Morhouse want his retainer of twenty thousand dollars a year paid?

A. By the Magazine.

Q. By the Magazine?

A. Not by the Playboy Clubs.

Q. Was anything else discussed at this third meeting in Chicago with Mr. Morhouse?

A. That he could help us out, that he could help us work out our problems.

Q. Yes?

A. In regards to our method of, type of, operation. He suggested an attorney to file for our liquor license, a Mr. Jerry Marrus.

The Court: Jerry Marrus?

Mr. McKenna: M-a-r-r-u-s, your Honor.

Q. Yes?

A. Mr. Morhouse also told us that he would pay Jerry Marrus out of our first twenty thousand dollar retainer.

Q. Now, can you place this third meeting in Chicago in point of time?

A. I would say it is sometime in June of '61.

Q. During this period?

A. June or July.

Mr. Brill: Excuse me, have we the whole conversation now of that third meeting in Chicago, of '61?

Q. Do we have that, the entire conversation?

A. The proximate conversation.

Q. During this period of time, May, June and July, had you met with Mr. Berger—I am pointing to the time after the first meeting with Mr. Morhouse?

A. I met with Mr. Berger sometimes after the second [fol. 165] meeting, after my second meeting in New York with Mr. Morhouse, which I think would have been in June.

Q. You met with Mr. Berger?

A. Yes, sir.

• • • • •

Q. Can you place the time when this meeting was had with Mr. Berger?

A. I would say in June or July.

• • • • •

Q. And where then did this meeting occur?

A. In our offices in Chicago.

Q. Did anything in particular occur at this meeting?

A. Mr. Berger asked for twenty-five thousand dollars for Commissioner Epstein.

Q. Did you give Mr. Berger twenty-five thousand dollars for Commissioner Epstein?

A. I am not sure if we gave it to him in that meeting or one shortly thereafter.

Q. Now, are you saying there was a second meeting with Mr. Berger?

A. To the best of my recollection we discussed the payment and then Mr. Berger came back with the checks.

Q. Now, in the first meeting where you discussed the payment, could you give us the conversation between yourself and Mr. Berger regarding the payment?

• • • • •

The Witness: The conversation in the meeting was originally that Mr. Berger wanted cash. We explained to Mr. Berger we have no cash in the company. The only way it could be paid is by check.

Now, I think that was the first meeting. On the second meeting Mr. Berger explained to me that he was cashing the checks and that there would be a sizeable tax bite out of these checks and the cash he was going to deliver to Commissioner Epstein.

Q. Was there any discussion between you and Mr. Berger as to who, to whom, the checks were to be drawn?

A. To whom the checks should be made out?

[fol. 166] Q. Yes.

A. Well, Mr. Berger mentioned several companies to make the checks out to. There was a number of checks given, I am not sure if it was Berco, or—

Q. Do you recollect that Mr. Berger did issue instructions as to whom the checks should be made out to?

A. Yes, sir.

Q. Now, was Mr. Berger given checks?

A. Yes, sir.

Q. Was he given checks in your presence?

A. Yes, sir.

Q. What were the amounts of the checks?

A. There was two checks for \$12,500.

Q. And this is the second meeting you are referring to with Mr. Berger?

A. Yes, sir.

Q. Who was present at that meeting?

A. Mr. Robert Preuss.

Q. And did you see the two checks that were issued, that were given to Mr. Berger?

A. Yes, sir.

(Two checks were then marked People's Exhibits 5 and 6, for Identification, respectively.)

By Mr. McKenna:

Q. I show you People's Exhibits 5 and 6 for identification, respectively; can you tell me what they are?

A. These are the two checks that were given to Mr. Berger.

Mr. Brill: Period.

Q. All right, stop there. Now, just for the purposes of clarifying what might be a confusing situation, Mr. Morton, I have been referring to the first and second meetings with Mr. Berger. Am I correct in saying that these two meetings relate to the checks?

A. The first meeting was a discussion of these checks, the second meeting was the delivering of these two checks for Commissioner Epstein.

[fol. 167] Q. It is not the first and second time you had met with Mr. Berger?

A. No, sir.

Mr. McKenna: I now offer these checks in evidence, your Honor.

Mr. Brill: I object to them, if your Honor pleases.

The Court: Overruled, received.

(Check Number 4404 was received in evidence and marked People's Exhibit 5 in Evidence; and Check Number 4405 was received in Evidence and marked People's Exhibit 6 in Evidence.)

Mr. McKenna: May the record reflect that Exhibit Number 5 is a check drawn on the International Playboy Clubs, Inc., dated June 28th, 1961, in the amount of \$12,500, and payable to the Lee Berco Co., Inc. The endorsement on the back is "Lee Berco Co., Inc.," and there is an illegible scrawl, I think you will agree, Mr. Brill?

Mr. Brill: It is illegible, I will agree with that.

Mr. McKenna: "President".

And the People's Exhibit Number 6 is a check drawn on the International Playboy Clubs, Inc., in the amount of twenty-five thousand dollars.

The Court: Amount of what?

Mr. McKenna: I am sorry, \$12,500. It is dated June 28th, 1961, and it is payable to Harry Steinman. On the back is "Harry Steinman".

By Mr. McKenna:

Q. Now, as to People's Exhibit Number 5, the check made out to Lee Berco Co., Inc., where did Playboy get the name Lee Berco Co. Inc.?

A. Mr. Berger explained to us who he wanted the checks made out to.

[fol. 168] Q. Now, when you gave those two checks to Mr. Berger, did he say anything to you concerning them?

A. He said he was going to cash them, pay the taxes on it, and deliver the balance to Commissioner Epstein.

Q. Now, after—withdrawn.

The date on the check is June 28th, 1961, the date on both checks; is that the date that they were delivered to Mr. Berger?

A. I am—

Q. To the best of your recollection?

A. I am not sure if it was delivered on that specific date, no, sir.

Q. Now, did there come a time after the delivery of these two checks to Mr. Berger that you met with Mr. Berger again?

A. Yes, sir.

Q. Can you recall when it was that you met with Mr. Berger?

A. I would say in July or August Mr. Berger came to me and explained that—

Q. Excuse me, before you go any further: Where did this occur?

A. In Chicago, in my office.

Q. Please continue.

A. Mr. Berger asked me for an additional—he asked me for additional monies because between the tax bite—again the tax bite was so large there wasn't going to be anything left for his services. The Commissioner was keeping the entire amount.

Q. What did you say when he said that to you?

A. I felt that we had—

Q. Excuse me, you can't say "I felt"—what did you say?

A. I said, "We had a deal, Ralph, and you were going to get your money out of the fifty thousand."

Q. What did he say?

A. Again he replied that the Commissioner was keeping the entire amount and that the tax bite was larger than they expected and there was nothing left for himself.

Q. Did you agree with him at that meeting to give him any additional compensation?

A. I discussed it with my associate.

Q. After the discussion—

[fol. 169] Mr. Brill: No, that is not responsive, your Honor. The question was: Did you agree with him to give him any additional compensation.

The Court: At that meeting.

The Witness: I did not agree at that meeting.

Q. Did you discuss this matter with your associate?

A. Yes, sir.

Q. After you discussed it with your associate did you have a discussion with Mr. Berger concerning the same matter?

A. Yes, sir.

Q. Can you tell us what you said to Mr. Berger and Mr. Berger said to you?

Mr. Brill: Time and place, please.

Q. Can you place it in point of time, this second discussion with Mr. Berger relating to this conversation?

A. I would say it was in August of 1961, in Chicago.

Q. Now, can you tell us what was said between Mr. Berger and you relating to his compensation?

A. I can only tell in that meeting I agreed to give Mr. Berger an additional fifteen thousand dollars.

Q. Do you recall where you got the figure, fifteen thousand dollars?

* * * * *

The Witness: The figure I got, I got the figure from the previous meeting with Mr. Berger.

Q. In the first meeting with Mr. Berger, am I correct in saying—

A. Excuse me, I don't know what the exact figure was, but it was more than fifteen thousand dollars. We agreed to pay him fifteen thousand.

Q. I see. Did you deliver to Mr. Berger any of this additional compensation?

A. I think Mr. Preuss deliver it—

Q. So you did not?

A. I did not.

[fol. 170] By Mr. McKenna:

Q. Do you recall any further meetings with Mr. Berger in 1961, and this would be after August of 1961?

A. I can't give you any specific times or dates, but I can tell you that Mr. Berger came to me on several occasions telling me how upset Commissioner Epstein was about our insisting our continuing of our mailings for memberships into New York.

Q. And is that the sum total of your recollection for the remaining quarter of 1961, in regard to Mr. Berger?

A. Yes, sir.

Q. Now we're in 1962. Did you have any meetings that you can recall in the first half of 1962 with Mr. Berger?

A. We were in touch by phone. I continually heard from Ralph about the fact that the Commissioner wanted to see

him, that he was still very upset and that we continued to mail into New York.

Q. Are you able to place, specifically, any of these conversations?

A. No, sir.

Q. Were you in touch with Mr. Morhouse in the first half of 1962?

A. In the summer of 1962.

Q. In the first half of 1962, before, let's say, June 30th of 1962, did you have any communications with Mr. Morhouse?

A. Well, if June is summer, I'd say in June, roughly in June, Mr. Morhouse was in touch with me—

Mr. Brill: Excuse me. I think that's the end of that answer. He wanted to know if he had any meetings with him.

Mr. McKenna: O. K.

Q. When you say Mr. Morhouse was in touch with you, are you referring to a specific face-to-face meeting, or are you referring to something else?

A. The best of my recollection, he called me, and I went to New York and met with Mr. Judson Morhouse, I believe, at the Roosevelt Hotel.

Q. And—

[fol. 171] Mr. Brill: May we have the time?

Mr. McKenna: I was about to do that.

Q. Can you place this in point of time?

A. I'd say in June of '62.

Mr. Brill: Persons present, please.

Q. Can you tell us who was present at that meeting?

A. Mr. Judson Morhouse and myself.

Q. And no one else?

A. No, sir.

Q. Can you tell us what Mr. Morhouse said to you at that meeting.

• • • • •

A. Mr. Morhouse told me that Commissioner Epstein was terribly upset about every—It seemed that a number of people were sending Commissioner Epstein our literature and wondering if you can charge twenty-five dollars admission and the keys and general type and concept of the Playboy Club. We discussed pretty much that single area, and I asked Mr. Morhouse if it would be possible for me to go up and see Mr. Epstein. Mr. Epstein at that time was in the hospital. Mr. Morhouse told me that he would let me know if he could set up an appointment with me with Mr. Epstein. I returned to Chicago.

Q. Did you see Commissioner Epstein at the hospital?

A. Yes, sir.

Q. Can you place the time that you saw Commissioner Epstein in the hospital.

A. I'd say in July or August 1962.

Q. Can you tell us what you said to Commissioner Epstein and what he said to you at that meeting in the hospital.

Mr. Brill: I object to this, if your Honor pleases.

Mr. McKenna: I'll withdraw it. I won't go into the conversation.

[fol. 172] Q. After this meeting in August or July or August with Commissioner Epstein, do you recall—

Mr. Brill: Which meeting in July or August?

Mr. McKenna: I think he's already testified to that, your Honor.

The Court: That's my recollection. He stated he met Commissioner Epstein at the New York hospital in July or August of 1962.

The Witness: That is correct, sir.

The Court: There was a question asked with respect to the conversations, and you've withdrawn that inquiry.

Mr. McKenna: On objection.

The Court: That is correct.

By Mr. McKenna:

Q. Did you have any further meetings with Mr. Morhouse after, say, August of 1962?

Mr. Brill: That's objected to, if your Honor pleases.

The Court: Overruled.

(To the witness) You may answer it.

A. Yes, sir.

Q. Can you place that in point of time. It was in November or December of 1962.

Q. And do you know where the meeting occurred?

A. The Roosevelt Hotel.

Q. And who was present at that meeting?

A. Mr. Judson Morhouse and myself.

Q. Can you tell us what Mr. Morhouse said to you and what you said to Mr. Morhouse.

Mr. Brill: I object to that, if your Honor pleases.

The Court: Overruled.

[fol. 173] A. Mr. Morhouse explained to me that he wanted me to clearly understand that he represented the magazine, not the Playboy Clubs. This was directly after a news release about the liquor inquiry.

Q. What did you say to him?

A. I asked Mr. Morhouse if he'd write, send me a note, and clarifying what he would like me to say.

Q. Did you have any further communications?

Mr. Brill: All right. My motion, if your Honor please, the objection goes to this whole line, so as to avoid the necessity of my constantly rising.

Your Honor has indicated that it may so be.

The Court: I do, sir.

Mr. Brill: Very good. Thank you.

Q. Did you meet with Mr. Morhouse again in 1962?

A. I vaguely recollect a meeting in December, or I had a number of phone calls from Mr. Morhouse wanting a meeting.

Q. Do you recall then—

A. I don't believe I had any additional meetings with Mr. Morhouse.

Q. Did the District Attorney's office serve a subpoena upon the New York Playboy Club in December of 1962?

A. Yes, sir.

Q. In the last half of 1962, before the Playboy Club opened, were you in communication with Mr. Berger?

A. I think Mr. Berger and I, we were in constant touch by phone. I can't—I am not sure of any meetings, offhand.

The Witness: I'm sorry, what was that?

Q. Were you in communication—

Mr. Brill: He said he wasn't sure.

[fol. 174] Q. Are you sure that you did have conversations with Mr. Berger?

A. I just would like you to restate the dates.

Q. Oh. The last half of 1962.

A. Yes, sir.

Q. Up to the date the Playboy Club opened were you in communication with Mr. Berger?

A. Yes, sir.

Q. When was Playboy Club, if you can tell us, given its liquor license?

A. The night before we opened.

Q. What kind of a license did you receive?

A. We received the normal R. L. license.

Q. Were there any conditions upon that license?

A. I signed a complete page of conditions of what I must do to keep the license in New York.

Q. Was there any condition relating to the issuance of keys by the Playboy Club?

A. (Continuing) We were told we could not use the keys in New York.

(Whereupon, the following proceedings took place at the bench, on the record, between the Court and counsel for both sides, but out of the hearing of the members of the jury:)

Mr. McKenna: Your Honor, I now intend to ask this witness about a conversation had between the officers of the Playboy Club, including this witness, relative to the first meeting or second meeting that he has with Mr. Morhouse.

Mr. Brill: As I understand it, this is a conversation had without the presence of the defendant.

Mr. McKenna: That's correct.

Mr. Brill: And I press the objection, and I respectfully submit to your Honor that the prosecution has failed to [fol. 175] establish the existence of the conspiracy charged, and consequently such conversation could not be in furtherance of any such conspiracy as is charged, without going further into the reasons. Your Honor has already indicated his disposition.

The Court: I would hold that there is ample evidence to establish the existence of a conspiracy to commit the crime as charged in the second count in the indictment, and as I understand the law, conversations had between co-conspirators, even in the absence of the defendant, if they relate to the furtherance of the objects of the conspiracy, are admissible against the defendant. Under that concept of law I'm constrained to overrule your objection, and you have an exception.

Mr. Brill: Thank you, sir.

(Whereupon, the following proceedings took place on the record, in open court:)

By Mr. McKenna:

Q. Mr. Morton, I would like to direct your attention back to 1961. After you had your first meeting with Mr. Morhouse, was there a discussion among the officers of the Playboy Club relating to that meeting you had with Mr. Morhouse?

A. Yes, sir.

Mr. Brill: Can we have the time and place.

Q. Now can you place in point of time that meeting with your associates at the Playboy Club.

A. Between the first and second meetings. The first was in May and the second was the end of May, I believe. It must have been in between those two dates.

Q. Where did the meeting occur?

A. In our Chicago office.

[fol. 176] Q. Who was present at the meeting?

A. Mr. Hefner, Mr. Preuss, Mr. Lownes and myself.

Q. Can you give us what you said.

A. What I said is we agreed to pay Mr. Judson Morhouse twenty thousand dollar per year retainer.

The Witness: Again, the things that I discussed with Mr. Judson Morhouse at the first meeting were (A) operating of clubs within the Playboy organization, one hundred thousand dollar stock option, and a twenty thousand dollars a year retainer.

Q. Did Victor Lownes say anything, when you said this to him?

A. Again, I am not sure if it was in the first, in the second or—in the first meeting or the second meeting Lownes said, "We ought to blow the whistle."

Q. What did Mr. Preuss say at this meeting?

A. I am not sure what Mr. Preuss said.

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The Court: (To the witness) Have you completed the full conversation, as you recall it, at the first meeting of the officers of Playboy?

The Witness: Well, if that was the meeting that Victor made that statement in, I said, "Well, you know, this is the top man in New York. I don't know where we're going from here." And I felt that we had no alternative but to stay with Mr. Morhouse, Berger and Epstein.

Q. When you say you felt you had no alternative, are you relating what you actually said?

A. Yes, sir.

Q. Now was there a second meeting among the Playboy associates concerning your discussions with Mr. Morhouse? [fol. 177] A. We had our second meeting after Mr. Lowmes and I went to visit Mr. Judson Morhouse.

Q. Now, how soon after you went to see Mr. Morhouse did the second meeting occur?

A. I'd say within a few days after, the second meeting with Mr. Morhouse.

Q. Where did the second meeting occur?

A. In Chicago.

Q. And who was present?

A. At that meeting, to the best of my recollection, it was Mr. Hefner, Mr. Lowmes, Mr. Preuss and myself.

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Q. Will you just tell us what you said; if that is what you said, please say so.

A. "We made a deal with Mr. Judson Morhouse."

Q. Are you relating what you actually said?

A. Yes, sir.

Q. And what did Mr. Preuss say when you related this—

Mr. Brill: If anything.

Q. —if anything?

A. I'm not sure what Mr. Preuss said.

Q. Did Mr. Hefner say anything when you related this to him?

A. I am not really sure about what the other conversations were in that meeting.

Mr. McKenna: Your Honor, that completes the direct examination of this witness.

Thereupon, at 3:33 p. m., the jurors and the alternate jurors left the courtroom and the following proceedings took place in their absence and without their hearing.)

[fol. 178] Mr. McKenna: Let the record reflect I am turning over to Mr. Brill notes taken on January 5, 1963, of an interview conducted in the office of Chief Assistant District Attorney Scotti of Mr. Morton. Also present were Assistant District Attorney Goldstein, Assistant District Attorney McKenna, a Mr. Samuel Lacter, an accountant for the District Attorney's office, and Mr. Milton Pollock, attorney for Mr. Morton. That will be Court's Exhibit 1.

(The document referred to was marked Court's Exhibit 1.)

Mr. McKenna: I now offer as Court's Exhibit 2 for identification a transcript of the Grand Jury minutes of Mr. Morton's testimony given March 4, 1963, pages 2132 through 2271; and this was the only appearance of Mr. Morton before the Grand Jury.

(The document referred to was marked Court's Exhibit 2 for identification.)

Mr. McKenna: And, finally, Court's Exhibit No. 3, a set of notes of an interview with Arnold Morton by As-

sistant District Attorney McKenna, dated September 10, 1964, consisting of six pages. That is the sum total.

(The document referred to was marked Court's Exhibit 3 for identification.)

[fol. 234] ROBERT S. PREUSS, residing at 7970 Oak Avenue, River Forest, Illinois, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination.

By Mr. McKenna:

Q. Mr. Preuss, what is your occupation?

A. I am a vice-president of finance and business manager for the Playboy Clubs and Playboy Magazine.

Q. And can you tell us what that position entails?

A. The position entails the control of the cash, flow of the companies' cash in and out, the supervision of budgets, income tax works, income tax work, profit and loss statements, supervision of most of the administrative departments of the companies, such as the subscription departments, the credit and collection departments, the building maintenance departments, as well as the accounting departments of the two companies.

Q. Are you a certified public accountant?

A. Yes, I am.

Q. How long have you been associated with Playboy.

A. I have been full time with the company for six years. Prior to that I was associated with the company as an auditor and consultant, when I had my own business and Mr. Hefner started his business.

Q. Is it not a fact you were a college roommate of Mr. Hefner's?

A. That is true; yes, sir.

Q. Now, Mr. Preuss, does your position entail supervision of both the Magazine and the Playboy Clubs?

A. Yes, it does.

[fol. 235] Q. Mr. Preuss, did you set up the record-keeping system for the Playboy organization?

A. For the Playboy Clubs, I did. The books for the Playboy Magazine had been set up prior to my association.

Q. At the present time, is it true that you are supervising the record-keeping and record management of Playboy Magazine and Playboy Club?

A. Yes, both companies.

Q. Do you also have the power to sign checks for the Playboy Clubs?

A. Yes, sir, I do.

Q. How many people can actually sign checks for the Playboy Clubs?

A. Approximately four or five.

Q. Who are they?

A. Mr. Hefner, Mr. Morton, myself, our comptroller, Mr. Andrin. There are four.

Q. During the years 1960 and 1961, did checks issued by the Playboy Club require your approval?

A. Yes, they did, either through the signing of the check itself or through approval of the document requesting the check.

Q. In your capacity as an officer of the Playboy Club, did you have occasion to approve checks drawn by the Playboy Club to the order of Ralph Berger?

A. Yes, sir, I did.

Q. Did you produce, in response to a request by the District Attorney's office, checks that had been drawn by the Playboy Club to Ralph Berger?

[fol. 236] Mr. Brill: Now, if Your Honor please, I have an objection to this entire line. I would like to state the rules and the grounds of law on which I make the objection. May we approach the side-bar?

The Court: You may.

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein, and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

Mr. Brill: Your Honor, in view of the unequivocal, uncontradicted testimony in the record that there was not a conspiracy, that the payments were extortive in nature, the testimony at this time from this witness with respect to the issuance of any checks can only be inflammatory and prejudicial to the defendant and, in effect, deprive him of a fair trial. Unless the District Attorney is prepared to qualify the matter and make it clear that the checks were not, in fact, issued pursuant to a conspiracy alleged in the indictment, I feel obliged to press the objection.

The Court: Your objection is overruled; you have an exception.

Mr. Brill: Very good, sir.

And may it be clear, Your Honor, that—

Mr. McKenna.

Mr. McKenna: Yes, sir.

Mr. Brill: May it be clear that I need not object to each of the questions with respect to each of the checks; that it will be deemed that I have taken an objection with respect to each of the checks; and in the event they are offered, may it be deemed that I have objected to the offer and the reception in evidence of each of the checks—

Mr. McKenna: Yes.

[fol. 237] Mr. Brill: —without necessity for my rising on each occasion. I don't want to interrupt, if I can avoid it, by objecting, but I want to preserve the record.

The Court: I think the better practice would be for you to reserve your objection until the question is asked rather than make a long objection, because we may get confused in the record.

Mr. Brill: Very good, sir. All right.

(At this point the proceedings at the bench were concluded and the following took place within the hearing of the jurors and the alternate jurors.)

The Court: Now, we will have the last question read back to the witness.

And you may answer it.

• • • • •

The Witness: Yes, sir, I did.

Mr. McKenna: I ask that this be marked People's Exhibit 7 for identification.

The Court: Mark it for identification.

(The check referred to was marked People's Exhibit 7 for identification.)

Q. I show you People's Exhibit No. 7 for identification. Can you tell us what that is?

A. It is a Playboy check drawn in the normal course of business, payable to R. Berger.

• • • • •

Mr. Brill: I object to its reception, if Your Honor please. My other reasons are those cited at the side-bar a little earlier in the course of a discussion had with the Court there.

The Court: Overruled. Received in evidence.

(The check referred to, previously marked People's Exhibit 7 for identification, was admitted in evidence and marked People's Exhibit 7.)

[fol. 238] (Another check is marked People's Exhibit 8 for identification.)

Mr. McKenna: Let the record reflect that People's Exhibit 7 in evidence is a check payable to Ralph Berger, dated November 29, 1960, in the amount of \$274.33, signed by Victor Lownes, endorsed on the back, "R. Berger." Also there is a notation, "OK for cash," "R. Berger" under there.

Q. I show you People's Exhibit 8 for identification. Is that a check of the Playboy Club?

A. Yes, it is.

Q. Is it a check drawable to the order of Ralph Berger?

Mr. McKenna: Then I offer it in evidence, if Your Honor please.

Mr. Brill: And I object to it, if Your Honor please.

The Court: Overruled.

(The check referred to, previously marked People's Exhibit 8 for identification, was admitted in evidence and marked People's Exhibit 8.)

Mr. McKenna: May the record reflect that People's Exhibit 8 is a check, dated December 13, 1960, payable to Lee Berco Co., Inc., in the amount of \$950. It is signed by Victor A. Lownes. It is endorsed on the back, "Lee Berco Co., Ralph Berger."

Q. Mr. Preuss, do you remember when you first met Ralph Berger, if at all?

A. I first met Ralph Berger, I believe it was early in May, 1961.

Q. Do you remember where you met him?

A. In my office.

[fol. 239] Q. Where is your office?

A. 232 East Ohio, Chicago, Illinois, Playboy Building.

Q. Was anybody with Mr. Berger when you met him?

A. Mr. Morton brought Mr. Berger to my office.

Q. And did you have a discussion with Mr. Berger on that occasion?

A. Yes, we did.

Q. Can you tell us what you said to Mr. Berger and what Mr. Berger said to you?

The Witness: Mr. Morton opened the conversation by saying that Mr. Berger—

Q. Was Mr. Berger present when Mr. Morton spoke to you?

A. Yes, he was.

The Witness: Mr. Morton said that Mr. Berger was in the building to discuss the receipt from Playboy of amounts of money to reimburse him for expenses that he had incurred in making various trips and telephone calls to New York on behalf of Playboy.

Q. Did Mr. Berger say anything to you in that conversation?

A. After Mr. Morton told me that, I first said, "What for?" We had already paid Mr.—had agreed to pay Mr. Berger \$5,000. And at that point Mr. Berger said but that was for his services, and he had spent an awful lot of money, especially on telephone calls, and that he felt these should be reimbursed. He mentioned a sum far in excess of what we thought—

Mr. Brill: I object to that. I ask that he tell us what he said.

The Court: Sustained.

What did he say?

[fol. 240] The Witness: He requested a figure which I do not remember.

Q. Am I correct in—

Mr. Brill: I move to strike that out, if Your Honor please. He said he doesn't remember.

The Court: I don't know what his question is yet. I would like to hear the question.

Mr. Brill: I mean the last answer. I move to strike out the last part.

The Court: Well, that is an answer. He does not recall the figure.

Continue.

Q. Am I correct in understanding your testimony that Mr. Berger asked for a figure in excess of \$5,000?

The Witness: Yes, it is.

Q. Was there any further conversation with Mr. Berger on that occasion?

A. There was much further discussion. I don't remember the details of it, exactly what was said by which parties, but we had a discussion, the result of which was that we—

Mr. Brill: I object to the result.

The Court: Sustained.

The Court: What, if anything, did you say to Mr. Berger?

The Witness: I said to Mr. Berger that if he would go back to his office and submit to me a bill outlining the expenses, approximating, but not in the exact amount of \$1,500, we would pay that bill.

Q. Now, on that occasion of your first meeting with Mr. Berger, did you give Mr. Berger anything?

[fol. 241] A. I believe it was at that same meeting that I gave Mr. Berger an airline ticket for an upcoming trip to New York.

Mr. Brill: Now, can we have the date of this, please?

Q. Can you place the date of that meeting with Mr. Berger?

A. It was early in May, 1961.

Mr. McKenna: I ask that this be marked People's Exhibit 9 for identification.

The Court: Mark it.

(The check referred to was marked People's Exhibit 9 for identification.)

Q. I show it to the witness (handing). Is that a check of Playboy Club?

A. Yes, it is.

Mr. McKenna: I now offer that in evidence, Your Honor, as People's Exhibit No. 9.

Mr. Brill: I object to it, if Your Honor please.

The Court: May I see it, please. Thank you.

Objection overruled. Received in evidence.

(The check referred to, previously marked People's Exhibit 9 for identification, was admitted in evidence and marked People's Exhibit 9.)

Mr. McKenna: May the record reflect that People's Exhibit No. 9 is a check of International Playboy Clubs, Inc., dated May 5, 1961, in the amount of \$5,000, payable to Ralph Berger, signed by Victor Lownes, and endorsed on the back, "Ralph Berger."

Q. Do you recall giving this check to Ralph Berger?

A. No, I don't.

[fol. 242] Q. Now, you mentioned before, Mr. Preuss, that on this occasion of the first meeting you had with Mr. Berger, you arranged to give Mr. Berger an airline ticket.

A. Yes.

Q. Did he actually receive the airline ticket at that meeting?

A. I don't remember.

The Court: I assume that he is talking about the same airline ticket that the parties arranged to give the defendant at this early May, 1961, meeting; and your testimony now is that you have no recollection as to whether or not he received it at this meeting?

The Witness: That is correct, sir. We arranged it at that meeting. Whether he received it at that meeting or a day or so following, I don't remember.

* * * * *

Mr. McKenna: I ask this be marked as People's Exhibit 10 for identification.

The Court: Mark it.

(An airline ticket was marked People's Exhibit 10 for identification.)

Q. I show you People's Exhibit 10 for identification; is that an airline ticket issued by the Playboy Club?

A. Yes, it is.

Mr. McKenna: I now offer that in evidence as People's Exhibit Number 10.

* * * * *

The Court: Overruled, received.

(People's Exhibit 10 for identification was then received in evidence and marked People's Exhibit 10 in evidence.)

Mr. McKenna: Let the record reflect that People's Exhibit Number 10 is an airline ticket issued by the American Airlines, Inc., and the number of the ticket is 0127,885,678. [fol. 243] It is dated April 27th, 1961, issued by Playboy Magazine. The name of the passenger is M. R. Berger, Flight Number 57 on May 1st from Chicago to New York at 4 o'clock; and return from New York to Chicago on Flight 732 on May 2nd, at 5:30 P. M.

By Mr. McKenna:

Q. You mentioned the fact that in this meeting you had asked Mr. Berger for a voucher, for a bill, in which he

would itemize expenses in the amount of approximately fifteen hundred dollars; is that correct?

A. That is correct.

Q. Did you ever receive such a voucher?

A. Yes, I did.

Mr. McKenna: I ask that this be marked as People's Exhibit Number 11 for identification.

The Court: Mark it.

(A voucher and two hotel bills were marked People's Exhibit 11 for identification.)

Q. Is this the voucher you received from Ralph Berger?

A. Yes, it is.

Q. And this is the voucher kept by the Playboy Clubs in the ordinary course of business?

A. Yes, it is.

Q. And supporting that voucher are there two hotel bills?

A. Yes, there are.

Mr. McKenna: I offer that in evidence as People's Exhibit 11, your Honor.

The Court: Received.

Mr. Brill: I suppose that is the place where the objection should be.

The Court: All right, received.

(People's Exhibit 11 for identification was received in evidence and marked People's Exhibit 11 in evidence.)

[fol. 244] Mr. McKenna: Let the record reflect that People's Exhibit 11 is a letterhead of Lee Berco Company, Inc., the address on the right-hand corner, 111 North Wabash Avenue, Chicago 3, Illinois. It has a telephone number. The addressee is the International Playboy Clubs, Inc., 116 East Walton.

It is dated May 15th, 1961. "New York trip, April 8th, hotel, plane and miscellaneous expenses, \$316. New York trip, May 1st, hotel and miscellaneous expenses, \$270.76.

New York trip, May 15th, hotel, miscellaneous expenses, \$230.

"Telephone bills from November to April, \$800." The total amount of the bill is \$516.83.

By Mr. McKenna:

Q. Mr. Preuss, are those your initials on the lower right-hand corner?

A. Yes, they are.

Q. Now, Mr. Preuss, after you received that voucher do you remember issuing a check in the amount of \$1516.83?

A. Our accounting department did, sir.

Mr. McKenna: I ask that this be marked as People's Exhibit 12 for identification.

The Court: Mark it.

(A check in the amount of \$1516.83 was marked People's Exhibit 12 for identification.)

Q. I show you People's Exhibit Number 12 for identification and ask you if that is a check of the Playboy Club?

A. Yes, it is.

Q. And is that a check issued in the regular course of business by the Playboy Club?

A. Yes, it is.

Mr. McKenna: I now offer that in evidence, if your Honor please, as People's Exhibit Number 12.

Mr. Brill: Objection.

[fol. 245] The Court: Overruled, received in evidence.

(People's Exhibit 12 for identification was then received in evidence and marked People's Exhibit 12 in evidence.)

Mr. McKenna: Let the record reflect that People's Exhibit Number 12 is a check in the amount of \$1516.83, dated June 8th, 1961, payable by the International Playboy Clubs, Inc., in the amount of—I read the amount. It is payable to Lee Berco Co., Inc.

Q. Is that your signature on the lower right-hand corner, Mr. Preuss?

A. Yes, it is.

Mr. McKenna: It is signed R. S. Preuss, and up in the left-hand corner of the check it says: "Per your letter of May 15th, 1961," and the endorsement on the back is credited to the account of "the within named payee."

By Mr. McKenna:

Q. Now, Mr. Preuss, do you recall in June of 1961 having a meeting with Ralph Berger?

A. I had several meetings with Mr. Berger and I don't necessarily recall any in June at this point.

Q. Now, Mr. Preuss, do you keep a calendar pad?

A. Yes, I do.

Q. And on that calendar pad do you record your appointments?

A. Most of them, yes.

Q. And is that a record that you keep in the ordinary course of your duty at the Playboy Club?

A. Yes.

Mr. McKenna: Let me have this marked as People's Exhibit 13 for identification.

The Court: Mark it.

(Two memo sheets were marked People's Exhibit 13 for identification.)

[fol. 246] Q. I show you People's Exhibit 13 for identification.

A. Yes.

Q. Does that refresh your recollection as when in June of 1961 you met with Mr. Berger?

A. Yes, it was on June 27th that I met with Mr. Berger.

Q. Do you recall if anyone was present when you met with Mr. Berger on June 27th, 1961?

A. Mr. Morton was present at that meeting.

Q. And where did that meeting occur?

A. In my office at the Playboy Building.

Q. Was this in Chicago?

A. In Chicago.

Q. Now, did you have a discussion with Mr. Berger on that occasion?

A. There wasn't too much discussion with Mr. Berger at that meeting.

Q. O. K., stop there.

A. All right.

Q. Did anything occur at that meeting on June the 27th?

A. Yes, Mr. Berger delivered to me a bill on a letterhead for \$12,500 to be paid. I delivered to Mr. Berger two checks for \$12,500 at that meeting.

Mr. Brill: I may be late with the objection, if your Honor please, but I would like it interposed in the record, and I would like to move to strike the answer.

The Court: I will allow it to stand. Overruled.

He told us what took place.

Mr. McKenna: May I have this marked for identification as People's Exhibit 14 for identification?

The Court: Mark it.

Mr. Brill: So the record is clear, I am doing this in line with the discussion we had at the Bench—

The Court: All right. Mark it.

(A bill was marked People's Exhibit 14 for identification.)

[fol. 247] Q. Is that a bill received by the Playboy Club in the ordinary course of business?

Mr. Brill: I object to that, if your Honor please, because it is quite apparent that this is not the ordinary course of business. I think all of the testimony demonstrates that and I press the objection further on that ground, and may I *nunc pro tunc* press the objection on that ground and as well as to the other exhibits in connection with the alleged regular course of business?

The Court: Overruled.

Mr. McKenna: I will withdraw the question.

By Mr. McKenna:

Q. Did Ralph Berger deliver this to you on June 27th?

A. Yes, he did.

Mr. McKenna: I now offer it in evidence as People's Exhibit Number 14.

The Court: Show it to counsel.

Mr. Brill: I object to it.

The Court: Overruled, received.

(People's Exhibit 14 for identification was then received in evidence and marked People's Exhibit 14 in evidence.)

Mr. McKenna: Let the record reflect that People's Exhibit Number 14 is a letterhead of Lee Berco Co., Inc., dated June 15th, 1961, addressed to International Playboy Clubs, Inc., for services rendered, \$12,500. There are pencil notations on here, 6-27, and C. K., No. 4044.

Q. Is that your handwriting, the pencilled notations?

A. No, it is not.

Q. Did somebody else write on that?

A. Yes.

Q. O. K. Now, I show you People's Exhibits 5 and 6 in evidence, Mr. Preuss; do you recognize those checks?

A. Yes, I do.

[fol. 248] Q. Are these the checks you referred to that you gave Mr. Berger on June 27th, 1961?

A. Yes, they are.

Q. Did you receive any voucher for the second check in the amount of \$12,500, which you say you gave to Mr. Berger on June 27th, 1961?

A. No, I did not.

Q. Was any supporting business record made for that second \$12,500 check?

The Witness: Yes, I, personally, wrote a voucher requesting a check from our accounting department.

Mr. McKenna: I ask that this be marked as People's Exhibit 15 for identification.

The Court: Mark it.

(A Cashier's Voucher was marked "People's Exhibit 15 for identification".)

Mr. McKenna: Will you show it to the witness?

Q. Is that a check requisition of the Playboy Club, People's Exhibit 14 for identification?

A. Yes, it is—

Q. I am sorry, People's Exhibit 15?

A. Yes, it is.

Mr. McKenna: I now offer it in evidence as People's Exhibit 15, if your Honor please.

Mr. Brill: I object to it, if your Honor please.

Mr. McKenna: I will withdraw the offer in evidence.

Q. Mr. Preuss, this morning in your testimony you said that as a result of the voucher you received from Mr. Berger, in June, for \$12,500.00, you drew two checks in the amount of \$12,500.00. Now is that accurate?

A. No, that's not accurate.

[fol. 249] Q. So is it accurate now to say that in response to this voucher for \$12,500.00, which you received from Mr. Berger in June of 1961, you drew one check in the amount of \$12,500.00?

A. That is accurate, sir, yes, sir.

Q. Now did you receive or did you have a conversation with Mr. Berger relative to a voucher for the other check in the amount of \$12,500.00?

A. Yes. Prior to our meeting on that day—

Mr. Brill: Meeting on what day now?

Mr. McKenna: We are referring, I think, to the June 27th meeting.

A. That's correct, sir. Either in a personal discussion in my office or on the phone with Mr. Berger, I had requested bills for these two checks. Mr. Berger said he would bring those along. However, at the meeting, June 27th, he could only provide me with the one bill, explaining to me that he did not have a letterhead for Harry Steinman in his possession and would mail that to me later. Mr. Steinman was to be the other payee.

Mr. Brill: I object to what Mr. Steinman was.

The Court: Sustained.

Mr. Brill: And I move to strike it.

The Court: Unless it's part of the conversation that you had with Mr. Berger.

Q. Now before you drew the checks for the \$25,000, and before you received the voucher from Mr. Berger, had you had a conversation with Mr. Berger relative to this \$25,000.00?

A. Yes, again, prior to—

Q. Yes?

A. Yes.

Q. Approximately how much before June 27th did you have this conversation, to the best of your recollection?

A. I don't remember exactly how many days, but some days, several days beforehand.

[fol. 250] Q. Now where did the discussion take place?

A. Either in my office or on the phone with Mr. Berger.

Q. That would be in Chicago, is that right?

A. In Chicago, yes, sir.

Q. Can you tell us what you said to Mr. Berger and what he said to you?

A. Mr. Berger asked that the \$25,000 be split up into two checks for \$12,500, payable to two different parties, to help him in his tax situation. I said, "Yes," I could do

that since I didn't care who it went to. We had to pay out the \$25,000.

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By Mr. McKenna:

Q. And in this conversation did Mr. Berger tell you to whom he wanted the checks paid?

A. Yes, he did.

Q. And who was that?

A. Lee Berco Company, Inc., and Harry Steinman.

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Q. Now is it in this conversation that you asked Mr. Berger for the vouchers?

A. Yes, that's the same conversation, correct.

Q. Now when you gave these checks to Mr. Berger, on June 27th, did you have a discussion with him relative to this money?

A. Yes. We—Mr. Berger told me that this money would be going to Commissioner Epstein.

Q. Did he tell you anything else concerning this money?

A. He said that he would take the checks and run them through the bank accounts of the respective payees, one check for instance, he would deposit in the bank account of Lee Berco Co., Inc., and the other in a Harry Steinman account.

Q. Did he say anything else relative to himself in regard to these checks?

A. Just that he—that way he would see that the tax would be paid and the net, after a reserve for taxes, the net balance would be paid to Mr. Epstein.

[fol. 251] Q. In that conversation of June 27th did Mr. Berger tell you when the money was going to go to Commissioner Epstein?

A. No, I don't remember, sir.

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Q. By the way, Mr. Preuss, do you recall when it was on June 27th that you gave these checks to Mr. Berger?

A. It was late in the afternoon, approximately 5:30.

Q. Do you recall anything else concerning the issuance of these checks on June 27th?

A. Yes. If you will notice, the checks are dated June 28th. That is because—

• • • • •

A. This is because it was after the close of business on June 27th, and when I asked our controllers—our controller—to draw the checks, the books for the day had already been closed, since he knew that the checks couldn't possibly be deposited or cashed that day, he made them as the first part of the next day's business, which was June 28th.

• • • • •

Q. Now do you recall if any supporting vouchers were made for the second check of \$12,500 to Harry Steinman?

A. Yes. I wrote out a voucher myself, for the other check.

Q. I show you People's Exhibit 15 for identification—

• • • • •

Q. (Continuing) Is this the voucher you wrote out to support the check on June 28th, in the amount of \$12,500 to Harry Steinman?

A. Yes, it is.

Q. And is this a voucher that is kept in the course of business at the Playboy Club?

A. Yes, it is.

Mr. McKenna: I now offer this in evidence as People's Exhibit 15.

[fol. 252] Mr. Brill: That's the exhibit your Honor had before the Court at the time of the recess, and I had objected to it.

The Court: Overruled.

Received in evidence.

(Whereupon, the voucher, above referred to, previously marked People's Exhibit 15 for identification, was received in evidence and marked People's Exhibit 15 in evidence.)

Mr. McKenna: I ask that this be marked for identification as People's Exhibit 16.

(Whereupon, a check, above referred to, was, marked People's Exhibit 16 for identification.)

Q. Will you look at People's Exhibit No. 16. Is that a check of the Playboy Clubs?

A. Yes, it is.

Q. Was that a check issued in the course of business of the Playboy Club?

A. Yes, it is.

Mr. McKenna: I now offer that in evidence as People's Exhibit 16, your Honor.

Mr. Brill: I object to it, if your Honor pleases.

The Court: I'll allow it. Overruled.

(Whereupon, the check, above referred to, previously marked People's Exhibit 16 for identification, was received in evidence and marked People's Exhibit 16 in evidence.)

Mr. McKenna: (To the jury) Let the record reflect that People's Exhibit 16 is a check of the Playboy Clubs, dated June 29th, 1961, in the amount of \$217, payable to Ralph Berger, and it is signed, "Robert S. Preuss."

Q. Is that your signature at the bottom of that check, Mr. Preuss (handing to witness)?

A. Yes, it is.

[fol. 253] Mr. McKenna: (To the jury) The endorsement on the back is "Ralph Berger."

I ask that this be marked People's Exhibit 17 for identification.

(Whereupon, a document, above referred to, was marked People's Exhibit 17 for identification.)

Q. Was anything given to Mr. Berger, when he was issued airline tickets for trips to New York?

A. He was usually given an expense check at the same time.

Q. Can you give us just the approximate amount of the expense checks for the trips to New York?

A. Approximately two hundred dollars.

Q. Now can you give us the conversation you had with Mr. Berger relative to his expense money for trips to New York.

A. Mr. Berger asked for expense money. I said, "How much will it be? Can't you only tell that after you spend the money?"

He said, "Well, they're always about the same amount of money. The expenses are always about the same amount of money, approximately two hundred dollars," and he stated, "I could use the money before I pay out the expenses."

So I then stated, "Well, all right, I'll—We'll give you checks for approximately two hundred dollars when you are about to make the trip."

Q. Now I show you People's Exhibit No. 17, the airline ticket (handing to witness). Is that is that the type of airline ticket that Playboy Clubs receives from American Airlines, when a ticket is issued by Playboy Club?

A. Yes, it is.

[fol. 254] Q. And is this a ticket or a copy of an airline ticket that is kept in the regular course of business by the Playboy Club?

A. Yes, it is.

Mr. McKenna: I now offer that in evidence, as People's Exhibit No. 17.

Mr. Brill: Your Honor has my objection.

The Court: Received in evidence.

(Whereupon, the airline ticket, above referred to, previously marked People's Exhibit 17 for identification, was received in evidence and marked People's Exhibit 17 in evidence.)

Mr. McKenna: May the record reflect that People's Exhibit 17 is a ticket issued by American Airlines. It is dated June 29, 1961, Playboy Magazine. It is on Flight 102 on June 29, from Chicago to New York, at 5:00 P. M. The return date is open. And the name of the passenger is Mr. Ralph Berger.

By Mr. McKenna:

Q. Did you ever have a conversation with Mr. Berger in 1961 in which the name of Mr. Morhouse was mentioned?

A. Yes, sir.

Q. Can you tell us approximately when you had this conversation?

A. At the early May meeting that I previously described in relation to the expense monies of approximately \$1,500, agreed to be paid Mr. Berger. It was at that meeting that he mentioned Mr. Morhouse.

Q. And can you give us the substance of that conversation in so far as it pertains to Mr. Morhouse?

A. He stated that he had brought Mr. Morton in to see Mr. Morhouse, and that Mr. Morhouse was the man that would see that we got our liquor license.

Q. Now, did there come a time in May or June of 1961 when Mr. Morton came to you and discussed with you a meeting he had in New York with Mr. Morhouse?

[fol. 255] Mr. Brill: I object to it.

.

The Court: You may answer that just yes or no.

A. Yes.

Q. Who was present when you had this discussion with Mr. Morton concerning Mr. Morhouse?

A. Mr. Hefner, Mr. Lownes, as well as Mr. Morton and myself.

Q. Will you please tell us what Mr. Morton said at this meeting.

Mr. Brill: My objection runs to this entire line and may it be deemed that I have one to all of this conversation, Your Honor?

The Court: So ordered.

A. Mr. Morton reported to us that he had been taken by Mr. Bergey to see Mr. Morhouse in New York and that Mr. Morhouse and Mr. Morton had discussed our liquor-license problem, and that Mr. Morhouse had said to Mr. Morton that he could correct our problems on the liquor license, and that while the same arrangements with Mr. Epstein were still on, he would require a fee of \$20,000 a year, retainer for five years, \$100,000 in stock options, as well as the possibility of operating gift-shop concessions in Playboy Clubs throughout the country.

Q. Did you say anything to Mr. Morton in this conversation?

A. I repeated in the form of a question, "On top of Mr. Epstein?" Mr. Morton said, "Yes."

Q. Did Mr. Lownes say anything at this meeting?

Mr. Brill: Same objection, Your Honor, to the whole line.

The Court: And I make the same ruling.

[fol. 256] A. Mr. Lownes stated, "I think we ought to blow the whistle on this whole affair."

Q. Did Mr. Hefner say anything at this meeting?

Mr. Brill: Same objection.

The Court: I make the same disposition. You have an exception to the Court's ruling.

A. He swore and stated, "How high up does this go?"

Mr. Brill: Who is this?

Mr. McKenna: Hefner.

Q. Did Mr. Morton say anything else at this meeting?

Mr. Brill: Objection.

The Court: Do you recall, in substance, what he said?

The Witness: Mr. Morton said that Mr. Morhouse was one of the top political figures in the State of New York, Mr. Rockefeller's right-hand man, and that this gentleman should be able to accomplish, resolve our liquor license problems.

The Court: As I recall it, what the District Attorney presently is seeking is the substance of the conversation which took place at this meeting between the top executives of Playboy, that is, you, Mr. Hefner, Mr. Lownes, and Mr. Morton.

The Witness: Right. After Mr. Hefner raised the question, "How high does this go?" following that is when Mr. Lownes said his comment about blowing the whistle; and Mr. Hefner then said, "But who do we go to?" After that I don't recall the conversation so specifically, but it revolved around just who would we go to if we would want [fol. 257] to blow the whistle and a summing up of what the total bill was getting to be. It was getting to be quite high.

Q. Now, is that the entire report or conversation that Mr. Morhouse had with the other—I am sorry—Mr. Morton had with the other executives of Playboy?

A. In that same meeting?

Q. At this meeting.

A. With one more addition, which was a request that Mr. Lownes accompany him back to New York to see Mr. Morhouse so that the conversation could be verified for the benefit of all of us.

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Q. Was there a second meeting, to your knowledge? Did Mr. Lownes accompany Mr. Morton to New York to see Mr. Morhouse?

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A. Mr. Morton told me he and Mr. Lownes went to see Mr. Morhouse a second time, correct.

Q. Now, did Mr. Morton have a meeting with the executives of the Playboy Club after his second meeting with Mr. Morhouse?

A. Yes. We had another meeting in the conference room in the Playboy building in Chicago, in which Mr. Morton stated that he and Lownes had been to see Mr. Morhouse a second time and that things were as he indicated as a result of his first meeting. However, because of Lownes' knowledge of our stock affairs, they had tentatively agreed with Mr. Morhouse that stock options would be difficult, if not impossible.

Q. Did Mr. Morton say anything else at that time concerning the second meeting with Mr. Morhouse?

A. Not that I can recall.

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Q. I show you People's Exhibits 5 and 6. Does this refresh your recollection relative to what Mr. Morton said [fol. 258] at the second meeting concerning his meeting with Mr. Morhouse?

A. Discussion between—discussion by Mr. Morton concerning these checks was not made in a meeting of our executive committee.

Q. I see. Did you have a discussion with Mr. Morton— did you have a discussion just between you and Mr. Morton concerning his second trip to New York?

Mr. Brill: That is objected to.

Q. To see Mr. Morhouse.

The Court: I will allow it. Overruled.

Mr. Brill: May we have the date and place fixed?

Q. Just yes or no, and then I will place it.

A. Yes.

Q. Do you recall when it was that you had this discussion with Mr. Morton relative to his second trip to New York?

A. Very shortly after he came back from that trip. I can't remember the exact date now.

Q. And do you recall where this discussion occurred?

A. Either in his office or in my office in the Playboy building in Chicago.

Q. Now, can you tell us what Mr. Morton said to you on that occasion?

Mr. Brill: I object to it, if Your Honor please.

The Court: I will allow it. Overruled.

A. He repeated that—

Mr. Brill: I object to that.

The Court: Sustained.

Q. Just tell us what Mr. Morton said.

A. It looked like it was time to pay Commissioner Epstein part of his fee.

[fol. 259] Q. Tell us what he said.

A. He said that it looked like it was time to pay Commissioner Epstein a portion of his fee, because Mr. Berger, among other things, told him it was time.

Q. Now, do you recall— Did there come a time in 1961 when you met with Mr. Morhouse?

A. Yes.

Q. Do you recall when this was?

Mr. Brill: I object to this, if Your Honor please.

The Court: Overruled.

A. Late June or early July, 1961.

Mr. Brill: May I have a running objection and may it be deemed to each of the questions in respect of this conversation concerning Mr. Morhouse?

The Court: It is very difficult to allow a running objection.

Mr. Brill: All right.

The Court: I think you should make your objection as the occasion arises.

Mr. Brill: I was trying to avoid interruptions, Your Honor.

Q. You say late June or early July?

A. Yes, sir.

Q. And where did the meeting occur?

A. The meeting occurred first in my office at the 232 building in Chicago.

Q. Did the entire meeting take place there?

A. No. Mr. Morton had brought Mr. Morhouse down to my office prior to the three of us going up to the conference room in our building to meet with Lownes and Hefner.

Q. Now, can you tell us what Mr. Morhouse said at this meeting?

Mr. Brill: I have an objection, if Your Honor please.

The Court: Overruled.

[fol. 260] A. Mr. Morhouse stated that he would solve our liquor license problems; said he would like to receive a \$20,000 per year retainer; that we should pay this retainer from Playboy Magazine and not the Playboy Clubs, since he did not want his name connected with the Playboy Clubs either through the records of the New York Playboy Club or International Playboy Clubs; and that, in addition, he

would like to see us work out some way of giving him the \$100,000 stock options that he was seeking.

Q. Is that the substance of the conversation with Mr. Morhouse in Chicago, to the best of your recollection?

A. Another comment I remember is that I said of course we can issue the options, but that it would be necessary to list that fact in our public prospectus that is issued just before a stock issuance; and Mr. Morhouse said, "Well, we can't have that."

Q. Now, does that exhaust your recollection of that conversation with Mr. Morhouse?

A. Yes.

Mr. Brill: Now, is this the meeting in his office or in the conference room? I am at a loss as to that.

Q. Can you tell us where it was that this conversation took place?

A. This was in the conference room, after the meeting among all of us had started.

Mr. McKenna: I ask this be marked People's Exhibit 18 for identification.

(The paper referred to was marked People's Exhibit 18 for identification.)

Q. Did you have any communications with Mr. Morhouse in July of 1961?

A. After our meeting?

Q. Yes.

A. Either in late July or early August I spoke with Mr. Morhouse on the telephone and also received a bill through the mail from Mr. Morhouse.

[fol. 261] Q. Can you place the date when you received that bill through the mail from Mr. Morhouse?

Mr. Brill: I have an objection to this, if Your Honor please.

The Court: Objection overruled.

A. I don't remember the date, but we have the bill or we had the bill in file.

Q. I show you People's Exhibit No. 18 for identification. Is this the bill you received from Mr. Morhouse?

A. Yes, sir, it is.

Mr. McKenna: I now offer this in evidence, Your Honor, as People's Exhibit No. 18.

Mr. Brill: I object to the question and move to strike the answer.

The Court: May I see it, please?

Mr. McKenna: Yes.

The Court: Overruled. Received in evidence.

(People's Exhibit 18 for identification was then received in evidence and marked "People's Exhibit 18 in evidence.")

Mr. McKenna: People's Exhibit 18 is a bill on the letterhead of L. Judson Morehouse, 122 East 42nd Street, July 17th, 1961, to Playboy Magazine, 232 East Ohio, Chicago, Illinois. "Retainer for consultation and legal advise, \$20,000."

Under the \$20,000, it has a line through it, and under that is written "Ten thousand dollars."

By Mr. McKenna:

Q. Is that your handwriting, Mr. Preuss?

A. Yes, it is.

Q. Are those your initials at the bottom of that letter?

A. Yes, they are.

Q. Did you draw the line through and say "Ten thousand dollars"?

A. Yes, I did.

Q. Did you have a discussion with Mr. Morehouse relative to this bill?

[fol. 262] Mr. Brill: I object to it.

The Court: I will allow it, overruled.

Mr. Brill: And I object to the conversation which he is about to testify to.

The Court: Objection overruled.

The Witness: Yes, in August I talked to Mr. Morehouse on the telephone. He was calling to receive payment on the bill. I discussed with him the fact that since we were a young, growing company, we had constant need of cash and that if it was possible I would rather not pay the entire twenty thousand at this time, would it be possible to pay him only ten thousand at this time?

He said: "Yes." I took this bill, scratched out "twenty thousand" and wrote "Only ten thousand" and a check was so issued.

Q. On which company was the check to Mr. Morehouse drawn?

A. On the magazine. I am sorry, it was first drawn on Playboy Clubs International check.

Q. Was this check sent to Mr. Morehouse?

A. Yes, it was.

Mr. Brill: I have an objection to this, as well, your Honor.

The Court: Overruled.

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Q. Don't tell me your conversation with him relative to Mr. Morehouse. Did anything occur with regard to this check, to your knowledge?

A. The check was returned.

Q. Was the check returned to you?

A. Yes, it was, through the mail.

Mr. McKenna: I ask that this be marked as People's Exhibit 19 for identification.

(A check was marked "People's Exhibit 19 for identification.")

[fol. 263] Q. This is the check that was issued to and returned by Mr. Morehouse?

A. Yes, it is.

Mr. McKenna: I have this—may I have it received in evidence as People's Exhibit 19.

Mr. Brill: I object to it, if your Honor please.

The Court: May I see it?

Overruled, received in evidence.

(A check in amount of \$10,000, previously marked for identification as People's Exhibit 19 for identification, was received in evidence and marked "People's Exhibit 19 in evidence.")

* * * * *

Mr. McKenna: Let the record reflect that People's Exhibit 19 is a check, International Playboy Clubs, Inc., payable to L. Judson Morehouse, in the amount of ten thousand dollars dated August 9th, 1961. In the upper left-hand corner "One half payment of 7-17-61, legal retainer."

Q. Do you recall what you did when you received this check back?

Mr. Brill: I object to it.

The Court: I will allow it, overruled.

The Witness: First I tore off the signature, as you can see, and then requested that a check be drawn on the Playboy Magazine account payable to Mr. Judson Morehouse.

Q. Was a check drawn on the Playboy Magazine account payable to L. Judson Morehouse?

A. Yes, it was.

Mr. McKenna: I ask that this be marked as People's Exhibit 20 for identification.

The Court: Mark it.

(A check in amount of \$10,000 was marked "People's Exhibit 20 for identification.")

[fol. 264] Q. Is that the check issued by Playboy Magazine to L. Judson Morehouse?

A. Yes, it is.

Q. And was that check issued in the regular course of business at Playboy Magazine?

A. Yes, it was.

Mr. McKenna: I now offer that in evidence, your Honor, as People's Exhibit 20.

Mr. Brill: I object to the reception of the check and the preliminary questions leading to it, your Honor.

The Court: The objection is overruled. Received in evidence.

(People's Exhibit 20 for identification was then received in evidence and marked "People's Exhibit 20, in evidence.")

Mr. McKenna: Let the record reflect that People's Exhibit 20 is a check dated August 22nd, 1961, payable to the order of L. Judson Morehouse, drawn upon Playboy, H.M.H. Publishing Company, Inc., amount of ten thousand dollars."

Q. Is that your signature at the lower right-hand corner on that check?

A. Yes, it is.

Mr. McKenna: It is signed "Robert S. Preuss," endorsed on the back: "L. Judson Morehouse, L. Judson Morehouse, for deposit only."

By Mr. McKenna:

Q. Do you recall if you had any further conversations with Mr. Berger after June of 1961?

A. Yes, I did.

Q. And can you tell us when these conversations occurred?

A. I had several conversations after that with Mr. Berger.

Q. Can you give us the substance of these conversations?

Mr. Brill: Can we have the time each was had, your Honor? We ought to be able to fix the time.

[fol. 265] Q. Are you able to place the time of these conversations?

A. Only one, I had several others, but I cannot place the time, but I do recall one of the meetings in approximately early August, 1961.

Q. And where did that meeting occur?

A. In my office in Chicago, Playboy Building.

Q. And do you recall the substance of the conversation you had with Mr. Berger in early August of 1961?

A. Yes, I do.

Q. Can you give us the substance of that conversation that you had with Mr. Berger in early August of 1961?

Mr. Brill: To that question I object, your Honor.

The Court: Overruled.

The Witness: Yes, I can. Mr. Berger came into my office accompanied by Mr. Morton, and said that he would like to discuss the possibility of receiving a fee for himself.

Mr. Morton stated that: "You already set up the amount, Mr. Berger, how can you be asking for more at this time?"

Mr. Berger stated that the Commissioner had said to him that this was a much more difficult case than he had first anticipated and that he was retaining the entire proceeds from the previously agreed to fifty thousand, and that Mr. Berger was entitled to monies that he previously had thought he would receive out of the fifty thousand, but since the Commissioner was taking this stand he would have to receive additional monies directly from us.

Mr. McKenna: I ask that this be marked People's Exhibit 21 for identification.

[fol. 266] (Two memo sheets were marked "People's Exhibit 21 for identification".)

Q. Does this enable you to refresh your recollection as to when you had that meeting with Mr. Berger in August of 1961?

The Witness: Yes, it does.

Q. Have you exhausted your recollection with regard to the conversation with Mr. Berger on August 17th, 1961?

A. Specific conversation, yes, sir, but not substance.

Q. Tell us just what was said, in substance?

A. We would pay Mr. Berger an additional fifteen thousand dollars.

Q. Was anything additional said on August 17th relative to this additional payment?

A. Only that the first five thousand payment would be made shortly, based upon bills given to me by Mr. Berger, with the billing of the payment, the timing of the payments to remain open for the present.

Q. And did Mr. Berger give you a bill for the additional payments?

A. Not at that time, sir.

Mr. McKenna: May I have this marked as People's Exhibit 22 for identification.

(A check for \$5,000 was marked "People's Exhibit 22 for identification".)

Q. Does this refresh your recollection whether or not Mr. Berger received any payment on that date?

[fol. 267] Q. Does it refresh your recollection?

A. Yes, it does.

Q. Did Mr. Berger receive any payment on August 17th, 1961?

A. Yes, he did.

Mr. Brill: Objection.

The Court: I will allow it.

Q. How much?

A. \$5,000.

Mr. Brill: I object to that.

The Court: Overruled.

Q. In what form?

A. Playboy check Number 4641, date of August 17th, 1961.

Q. Is that the check that you gave to Mr. Berger, People's Exhibit 22?

A. Yes, it is.

Mr. McKenna: I now offer that in evidence, your Honor, as People's Exhibit 22.

Mr. Brill: Objection.

The Court: Overruled, received in evidence.

(People's Exhibit 22 for identification was then received in evidence and marked People's Exhibit 22.)

Mr. McKenna: Let the record reflect that People's Exhibit 22 is a check payable to the order of Ralph Berger, in the amount of five thousand dollars, drawn by International Playboy Clubs, Inc., dated August 17th, 1961.

Q. Is that your signature in the lower right-hand corner, Mr. Preuss?

A. Yes, it is.

Q. Signed by—

Mr. McKenna: That is signed by Robert S. Preuss, endorsed on the back "Ralph Berger, Broadway Strand" and some other illegible handwriting.

[fol. 268] Q. Do you recall who it was that ordered that check to be drawn?

A. I did.

Q. How did you order that check to be drawn?

A. Either in the form of a voucher that—either in the form of a bill from Mr. Berger or in the form of a voucher that I would prepare myself.

Mr. McKenna: I ask that this be marked as People's Exhibit 23 for identification.

The Court: Mark it.

(A Cashier's Voucher was marked People's Exhibit 23 for identification.)

Q. Now I show you People's Exhibit 23 for identification. Is that the voucher you made, requesting the drawing of the five thousand dollar check on August 17th for Ralph Berger?

Mr. Brill: I object to it, if your Honor pleases.

The Court: Overruled.

A. Yes, it is.

Mr. McKenna: I now offer this in evidence, as People's Exhibit 23.

Mr. Brill: Objected to, your Honor.

The Court: Overruled.

May I see it, please.

(Whereupon, People's Exhibit 23 for identification was handed to the Court by the court attendant.)

The Court: Received in evidence.

(Whereupon, People's Exhibit 23, previously marked for identification, was received in evidence and marked People's Exhibit 23 in Evidence.)

[fol. 269] Mr. McKenna: I ask this be marked People's Exhibit 24 for identification.

(Whereupon, a document, above referred to, was marked People's Exhibit 24 for Identification.)

Q. Now, Mr. Preuss, you testified, did you not, that you gave the five thousand dollar check to Mr. Berger in your office on August 17th, 1961?

A. Yes, I did.

Mr. McKenna: (To court attendant) Show him People's Exhibit 24.

(Whereupon, People's Exhibit 24 for identification was handed to the witness by the court attendant.)

Mr. Brill: I object to this, your Honor.

The Court: If you show it to him—

Mr. Brill: There's no foundation for a purpose of showing it to him.

The Court: Objection overruled.

Q. Did you receive a receipt from Mr. Berger, when you gave him the five thousand dollar check?

A. Apparently I did not give Mr. Berger the check at that meeting.

Mr. Brill: I object to that and move to strike it as not responsive.

The Court: Sustained, because it is not responsive to the question.

(To the witness) The question was, did you receive a receipt from Mr. Berger for the five thousand dollars.

The Witness: When I gave him the check—

The Court: Did you?

[fol. 270] The Witness: I didn't give him the check. So how could I?

The Court: You did not give him the check?

By Mr. McKenna:

Q. You want to correct your testimony?

Mr. Brill: No. I'll object to that, your Honor.

The Court: I'll allow it. Overruled.

A. Yes, I do.

Q. Will you please tell us what happened concerning this five thousand dollar check.

Mr. Brill: I object to that.

The Court: I'll allow it. Overruled.

A. The check was made up after Mr. Berger left my office. He later that day—

Mr. Brill: I object to this, if your Honor pleases. I move to strike it.

The Court: Sustained. The latter part is not responsive—unless it relates to this check and the manner in which it is claimed the defendant received it.

The Witness: It does.

The Court: I will allow it.

A. The check was made up later in the day, and Mr. Berger sent back a Mr. Mendelson to pick up the check. At the same time Mr. Mendelson delivered a bill for the five thousand dollars.

Mr. Brill: Now, if your Honor pleases, I object to it, and move to strike it. And your Honor can see, upon examination of Exhibit 24 for identification, that the answer is supplied by those documents.

[fol. 271] The Court: Objection overruled.

Mr. McKenna: (To the court attendant) Please show the witness Exhibit 24.

(Whereupon, People's Exhibit 24 for identification was handed to the witness by the court attendant.)

• • • • •

Q. Did you receive a bill in return for the five thousand dollar check?

Mr. Brill: I object to that, if your Honor pleases.

The Court: I will allow it. Overruled.

A. Yes, I did.

Q. Did you receive a receipt—

Q. (Continuing) —in return for the five thousand-dollar check?

A. Yes.

Q. Is that the receipt that is attached to the bill that you are referring to?

A. Yes, it is.

Mr. McKenna: I now offer in evidence People's Exhibit 24, which is a bill and a receipt.

Mr. Brill: Objection.

The Court: Show it to counsel, please.

Mr. Brill: This is the one to which I objected, your Honor, and to the whole line of examination with respect to it, since it was first shown to me.

The Court: Your objection is overruled.

Received in evidence.

(Whereupon, People's Exhibit 24, previously marked for identification, was received in evidence and marked People's Exhibit 24 in evidence.)

[fol. 272] Mr. McKenna: (To the jury) People's Exhibit 24, let the record show, is a letterhead of the Lee Berco Co., Inc. In ink is handwritten "August 17, 1961, received from International Playboy Clubs, \$5,000 for services, public relations."

Q. Are those your initials at the lower right-hand corner, Mr. Preuss (handing to witness)?

A. Yes, they are.

Mr. McKenna: (To the jury) They bear the initials "R.S.P."

Also attached to that letterhead is a white pad, dated "8/17/61. Received check (in sealed envelope) payable to R. Berger by M. Mendelson."

And then at the bottom it says "Take to Andy."

Mr. Brill: Now, if your Honor pleases, in view of the language, I press the objection again.

Obviously, it's the rankest kind of hearsay, the very description of it.

The Court: What the Court will do is sustain your objection only to the extent of removing the smaller slip, because we don't know who Mr. Mendelson is.

I will allow the bill in evidence. That's the invoice for five thousand dollars.

By Mr. McKenna:

Q. Did you ever meet a person by the name of Mendelson, with relation to your dealings with Mr. Berger?

Mr. Brill: I object to that as leading.

The Court: May I have that question read back?

(Whereupon, the last question was read by the Court Reporter, as above recorded.)

The Court: Overruled.

(To the witness) You may answer that.

[fol. 273] A. I don't think I did, sir.

The Court: (To the witness) Do you know who he is at all?

Mr. Brill: I submit, your Honor, he said he doesn't know.

The Court: Do you know who he is, sir?

The Witness: Based on what my secretary said.

The Court: No, other than that. Have you any personal knowledge of his standing or position in relation to the defendant?

The Witness: No personal knowledge, no, sir.

The Court: All right.

By Mr. McKenna:

Q. Then your testimony is you never actually met a Mr. Mendelson.

A. Correct. That's my testimony.

Q. After June 29, 1961, did you issue any airline ticket to Mr. Berger for trips to New York?

A. Yes.

Q. And in connection with those trips, did you also issue expense monies to Mr. Berger?

A. Yes.

Q. Can you recall the specific dates that you issued those airline tickets?

A. No, I can't recall.

Mr. McKenna: I ask that this be marked People's Exhibit 25 for identification.

The Court: Mark it.

Mr. McKenna: For identification.

(Whereupon, a document, above referred to, was marked People's Exhibit 25 for identification.)

[fol. 274] Q. Take a look at People's Exhibit 25, please (handing to witness). Is that an airline ticket issued by the Playboy Club?

A. Yes, it is.

Mr. Brill: My objection goes to the heart of the situation discussed at the sidebar.

The Court: Received in evidence.

(Whereupon, the airline ticket, above referred to, previously marked People's Exhibit 25 for identification, was received in evidence and marked People's Exhibit 25 in evidence.)

Mr. McKenna: (To the jury) People's Exhibit 25 is an airline ticket on American Airlines, issued by Playboy Magazine, dated July 12, 1961, for Flight No. 92, on July 12th, leaving 9:00 P. M., Chicago to New York, with the return date open. The name of the passenger is Mr. Ralph Berger.

By Mr. McKenna:

Q. Do you recall receiving any further—after June 29th, 1961, receiving any bills from Mr. Berger relative to his expenses in connection with his trips to New York?

A. I believe I did receive such additional expense accounts.

Q. And do you recall what dates you received those expense vouchers?

A. No, I can't.

Mr. McKenna: I ask that this be marked People's Exhibit 26.

The Court: Mark it.

(Whereupon, a document, above referred to, was marked People's Exhibit 26 for identification.)

Q. Take a look at People's Exhibit 26 (handing to witness). Is that a bill you received from Lee Verco, in connection with the expenses for a trip to New York?

[fol. 275] Mr. Brill: I object to that, if your Honor please.

The Court: Overruled.

A. Yes, it is.

Mr. McKenna: I now offer that in evidence as People's Exhibit 26.

Mr. Brill: I object to it again.

The Court: Received in evidence.

(Whereupon, the document, previously marked People's Exhibit 26 for identification, was received in evidence and marked People's Exhibit 26 in evidence.)

By Mr. McKenna:

Q. Do you recall whether or not Playboy Clubs issued a check in response to that bill, People's Exhibit 26?

A. Either we issued a check either prior or in response to this bill, yes, sir.

Mr. McKenna: I ask that this be marked 27 for identification.

(Whereupon, a check, above referred to, was marked People's Exhibit 27 for identification.)

Q. Is that a check of the Playboy Clubs?

A. Yes, it is.

Mr. McKenna: I now offer this in evidence, your Honor, as People's Exhibit 27.

Mr. Brill: I object to it, respectfully object.

The Court: Received in evidence.

(Whereupon, the check above referred to, previously marked People's Exhibit 27 for identification was received

[fol. 276] in evidence and marked People's Exhibit 27 in evidence.)

Mr. McKenna: People's Exhibit 27, let the record reflect, is a check of the International Playboy Clubs, dated August 1, 1961, payable to Lee Berco Co., Inc., in the amount of \$208, signed by Victor A. Lowmes. In the upper left-hand corner is "July 12 trip to New York." Endorsed on the back, "Lee Berco Co., by R. Berger."

Q. Now—

Mr. Brill: That is no suggestion, I take it, Your Honor, that with respect to that endorsement or any of the others, that it is anything more than a statement that it bears such an endorsement. I think it might be misleading to have it as it stands now, "Endorsed so-and-so by R. Berger."

The Court: Well, I am certain that all the District Attorney intended was that the document, the check itself, bears the endorsement.

Mr. Brill: Yes. That is acceptable to me.

Mr. McKenna: I now ask that this check be marked People's Exhibit 28 for identification.

The Court: Mark it.

(The check referred to was marked People's Exhibit 28 for identification.)

Q. Will you take a look at People's Exhibit 28, please? Is that a check of Playboy Clubs, drawn in the regular course of business?

A. Yes, it is.

Mr. McKenna: I offer this in evidence, Your Honor, as People's Exhibit 28.

Mr. Brill: I object to it, if Your Honor please.

[fol. 277] The Court: May I see counsel for a moment, please?

(Off-the-record conference at the bench among the Court, McKenna, Mr. Goldstein, and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

The Court: In the record: Objection sustained at this time.

Q. Do you recall when the next—when for the next time, if any, you issued an airline ticket to Ralph Berger for a trip to New York?

A. No, I don't.

Mr. McKenna: Mark this 29, please, for identification.

(The paper referred to was marked People's Exhibit 29 for identification.)

Q. Do you recall if at any time after August 17 you gave Mr. Berger expense money for a trip to New York?

A. Yes, I believe we did.

Q. Now, will you take a look at—can you recall the specific date when you gave Mr. Berger expense money for a trip to New York?

A. With the help of People's exhibit, yes, I can.

Q. Can you do it without People's Exhibit 21?

A. No, I cannot.

Q. Okay. Now, take a look at People's Exhibit 29. Does this help you to refresh your recollection when you gave Mr. Berger expense money for a trip to New York?

A. Yes, it does.

Q. And what date do you recall giving Mr. Berger expense money for a trip to New York?

A. I really don't recall it, counselor. This is in my handwriting and indicates a date, but I don't recall it.

[fol. 278] Q. Does it help you refresh your recollection?

A. I have no recollection of issuing this voucher or check.

Q. Do you recall giving Mr. Berger at the end of August, 1961, any expense money for a trip to New York?

A. Not specifically, but after August 17 we indeed gave Mr. Berger additional airline tickets and expense checks.

Q. Will you take a look at People's Exhibit 28—showing the check that is on the stenographer's desk. Does this help you to refresh your recollection when Mr. Berger received expense money for a trip to New York after August 17, 1961?

A. The check I signed, but it still does not refresh my recollection. I cannot recall issuing these, but I did.

Q. Is that your signature on People's Exhibit 29?

A. Yes, it is.

Q. I am sorry. Twenty-eight, the check.

A. Yes, it is; on 29 also.

Q. And it is your handwriting on People's Exhibit 29?

A. Yes, it is.

Q. And was that check founded upon a voucher, which is People's Exhibit 29?

A. Yes, it was.

Mr. McKenna: Now, I offer in evidence, Your Honor, People's Exhibits 28 and 29.

Mr. Brill: * * * But I have a continuing objection.
The Court: Received in evidence.

[fol. 279] (The documents referred to, previously marked People's Exhibits 28 and 29 for identification, respectively, were admitted in evidence and marked People's Exhibits 28 and 29, respectively.)

Q. Do you recall, after August, 1961, issuing any other airline tickets to Mr. Berger for a trip to New York?

A. Yes.

Q. Can you give us the specific date?

A. No.

Mr. McKenna: I ask this be marked People's Exhibit 30 for identification.

(The paper referred to was marked People's Exhibit 30 for identification.)

Q. Will you take a look at People's Exhibit 30 for identification. Is this an airline ticket issued by the Playboy Club?

A. Yes, it is.

Mr. McKenna: I now offer this in evidence, Your Honor, as People's Exhibit 30.

Mr. Brill: I object. That is one I object to. Same objection.

The Court: May I see it, please?

Overruled. Received in evidence.

(The paper referred to, previously marked People's Exhibit 30 for identification, was admitted in evidence and marked People's Exhibit 30.)

Mr. McKenna: May the record show that People's Exhibit 30 is an airline ticket issued by American Airlines, dated October 30, 1961, passenger, Mr. Ralph Berger, from Chicago on Flight 114, October 31, at 1:00 P. M., and the return date is open.

[fol. 280] Q. Now, do you recall issuing Mr. Berger an expense check in connection with that trip to New York?

A. No, sir.

Mr. McKenna: * * * Will you mark this People's Exhibit 31 for identification and show it to Mr. Brill?

(The paper referred to was marked People's Exhibit 31 for identification.)

Q. Take a look at People's Exhibit 31 and tell us if this refreshes your recollection whether or not you issued a check to Mr. Berger in connection with the October 30 trip to New York.

Mr. Brill: Objected to.

The Court: I believe it is the October 31 trip.

Mr. McKenna: October 31 trip to New York.

The Court: The objection is overruled.

A. It is my signature on this check, but I don't recall issuing it.

Q. Is that a check of the Playboy Clubs?

A. Yes, it is. I am sorry. May I take that back? I would like to change that last answer. I do recall issuing this one.

Q. And is that a check of the Playboy Club?

A. Yes, it is.

Q. Was that issued in the course of business of the Playboy Club?

A. Yes, it is.

Mr. McKenna: I now offer this in evidence as People's Exhibit 31, Your Honor.

Mr. Brill: Objection.

The Court: Overruled. Received in evidence.

(The check referred to, previously marked People's Exhibit 31 for identification, was admitted in evidence and marked People's Exhibit 31.)

[fol. 281] Q. Do you recall having any conversation with Mr. Berger relative to People's Exhibit 31?

A. Yes, I do.

Q. Can you tell us what that conversation was, what you said to Mr. Berger and what he said to you?

A. Mr. Berger said he'd like another expense trip for, expense check for a trip to New York. I stated to him, "Fine, but why is it that after we agreed that every expense check would be approximately \$200, every previous check has been always over \$200?" and wasn't it plausible that sometimes he would spend a little less than \$200? So he said yes, that sounded reasonable and he would make this request for \$195.

Q. Now, do you recall any other conversation with Mr. Berger in 1961, after October 31?

A. There may have been, but I don't recall any.

Q. Now, did there come a time in early 1962 when you had a conference with Mr. Berger?

A. Yes.

Q. And can you place the month in 1962 of this conference?

A. Yes. It was late January, 1962.

Q. Are you able to recollect the specific date in January that you had this conference?

A. Yes, because of— Yes.

Q. What date was it?

A. January 31, 1962.

Q. And where did that conference take place?

A. In my office in Chicago.

Q. Was anybody present besides Mr. Berger and yourself?

A. No, just the two of us.

Q. Now, can you tell us what you said to Mr. Berger and what Mr. Berger said to you in the conference?

Mr. Brill: Objection, Your Honor.

The Court: Overruled.

A. In substance I can.

The Court: Yes. Now, relate that conversation.

The Witness: Mr. Berger stated that the Commissioner [fol. 282] was a very ill man and needed additional funds

and that it was time to discuss the payment of the remaining unpaid balances on Mr. Epstein's \$50,000 and his, Mr. Berger's, \$15,000. * * *

Q. Just tell us what was said at that conference.

A. I answered Mr. Berger by saying, basically, I agreed with him, but again; because of our need for cash, I asked him if it was possible to set up a payment schedule on those remaining balances extending over the next several months. He said that would be possible and we set such a schedule.

Q. Can you recall what that schedule was?

A. No, but I made a note of it at the time.

Mr. McKenna: May I ask that this be marked People's Exhibit 32 for identification?

(The paper referred to was marked People's Exhibit 32 for identification.)

Q. Now, take a look at People's Exhibit 32 for identification.

A. Yes.

Q. Does that refresh your recollection as to the schedule that you agreed with Mr. Berger upon—

Mr. Brill: I object to it.

The Court: I will allow it.

The Witness: Yes, it does.

Q. Now, will you tell us what that schedule of payments was on the remaining unpaid balances?

Mr. Brill: I object to that.

The Court: I will allow it.

The Witness: The twenty-five thousand-dollar payment meant for Mr. Epstein payable to Berco Company, or Steinman, were set up as follows: On February 5th—

[fol. 283] Mr. McKenna: Tell the Court and jury how the payments to Commissioner Epstein were set up, and I am referring to the balance of twenty-five thousand dollars?

The Court: On March—

The Witness: On March 5th, I would make a check payable to Berco Company for eight thousand dollars, on April 5th, a check payable to Mr. Steinman for eight thousand dollars, and on April 9th, I believe it is, two checks for forty-five hundred dollars each, one to Berco and one to Steinman. These total nine, nine—or nine, eight and eight—eight and nine are the—those are the twenty-five thousand dollars meant for Mr. Epstein. We set up an additional schedule of payments due to Mr. Berger, the remaining balance of ten thousand dollars.

That schedule was, February, March and April 12th. We would give Mr. Berger three thousand and three thousand and four thousand, in the respective months.

Q. Will you look at People's Exhibit 32 again?

Mr. Brill: I don't think he needs to look at it again, your Honor, I object to it.

The Court: I will allow it, you may look at it, sir.

Q. Does that refresh your recollection as to whether or not the schedule you just related is accurate?

Mr. Brill: I object to it.

The Court: I will allow it, overruled.

The Witness: It is accurate, except I believe I said April th, it is April 5th on the nine-thousand payment of two checks, forty-five hundred dollars each.

Mr. McKenna: I now offer this memorandum in evidence as People's Exhibit 32.

[fol. 284] Mr. Brill: I object to it, your Honor.

The Court: Objection sustained. He is giving us the testimony with respect to the schedules. I see no purpose in having this admitted into evidence.

By Mr. McKenna:

Q. Now, Mr. Preuss, as you have testified, the schedule of payments set up with Mr. Berger for the monies that would go to Commissioner Epstein were eight, eight and nine thousand dollars; is that correct?

A. That is correct.

Q. Was this schedule adhered to?

Mr. Brill: I object to that.

The Court: I will allow it.

The Witness: No, it was not.

Q. How much was actually paid under this schedule to Mr. Berger for Commissioner Epstein?

Mr. Brill: I object to that.

The Court: I will allow it.

The Witness: The first two eight thousand payments were made, but not necessarily on the date that had been set up in the schedule.

Q. Do you have a recollection that the date in the schedules were not adhered to?

A. Yes, I do.

.

Q. Did Mr. Berger tell you how he wanted the remaining twenty-five thousand dollars to be paid?

A. Yes, he did.

Q. And how was that to be paid?

A. The third check was to be made out to Lee Berco Co., Incorporated. The second check was to be made to Harry Steinman. The third amount of nine thousand was to be [fol. 285] made in two checks, forty-five hundred each, to Lee Berco Co., Incorporated, and Harry Steinman.

The Court: And you have already given us all that testimony?

The Witness: Yes, sir.

Q. Now, do you recall when the first check on this schedule of payments was issued by the Playboy Club?

A. The first check payable to Lee Berco Co., Incorporated, was issued, as I recall, on the date set up in the schedule, February 5th, 1962.

Mr. McKenna: May I have this marked for identification as People's Exhibit 33.

• • • • •

(Whereupon, a check for \$8,000. was marked People's Exhibit 33 for identification.)

By Mr. McKenna:

Q. Will you take a look at People's Exhibit 33 for identification, please.

A. Yes.

Q. Is this the check that was issued to Lee Berco Company as per the schedule of payments you established with Mr. Berger on January 31st, 1962?

A. Yes, it is.

• • • • •

Mr. McKenna: I offer People's Exhibit 33 for identification in evidence.

Mr. Brill: Objection.

The Court: Overruled. Received in evidence. Mark it.

(People's Exhibit 33 for identification was received in evidence and marked People's Exhibit 33 in evidence.)

Mr. McKenna: For the record, People's Exhibit 33 is a check of the Playboy Clubs International, Inc., payable to [fol. 286] Lee Berco, the amount is eight thousand dollars. It is dated February 5th, 1962.

Q. Is that your signature at the right-hand corner, Mr. Preuss?

A. Yes, it is.

Mr. McKenna: It is signed R. S. Preuss, and the endorsement on the back is "Lee Berco Co., Inc."

Mr. Brill: Bearing the endorsement.

Mr. McKenna: Bearing the endorsement of Lee Berco, Inc.

By Mr. McKenna:

Q. Now, do you recall if under that schedule a second check in the amount of eight thousand dollars was issued to the designee, Harry Steinman, by the Playboy Club?

A. Yes.

Q. Do you recall when that check was issued?

A. No.

Q. Do you recall if it was in the month of March?

A. I don't recall.

Mr. McKenna: I ask that this be marked as People's Exhibit 34 for identification, please.

The Court: Mark it.

(A check for \$8,000 was marked People's Exhibit 34 for identification.)

Q. Take a look at People's Exhibit 34; is that a check of the Playboy Company?

A. Yes, it is.

Q. Is that the check that was issued to Harry Steinman under that schedule established for January 31st, 1963, with Mr. Ralph Berger?

A. Yes, it is.

Mr. McKenna: I now offer this in evidence, if your Honor please, as People's Exhibit 34.

Mr. Brill: Objection.

[fol. 287] The Court: Overruled, received in evidence.

(People's Exhibit 34 for identification was then received in evidence and marked People's Exhibit 34 in evidence.)

Mr. McKenna: People's Exhibit 34 is a check of the Playboy Clubs, International, Inc., payable to Harry Steinman, in the amount of eight thousand dollars.

Q. Is that your signature at the lower right-hand corner, Mr. Preuss?

A. Yes, it is.

Mr. McKenna: It is signed "R. S. Preuss." It bears the endorsement on the back "Harry Steinman".

Q. Now, you also testified, did you not, Mr. Preuss, that at this same January 31st conference you established a schedule of payments to Mr. Berger for his expenses?

Mr. Brill: No, I object to it, if your Honor please. He did not say that.

The Court: I don't recall him using the word "expenses". I believe he referred to it as the sum of ten thousand dollars, as the balance of the fifteen thousand dollars due to the defendant for services.

Did you make that characterization, sir?

The Witness: Yes, sir.

By Mr. McKenna:

Q. Did you not testify that the schedule established was 3, 3 and 4; is that correct?

A. Correct, sir.

Q. And that these checks were to be payable to whom?

A. Ralph Berger, I believe.

Q. Do you recall if this schedule was adhered to?

A. After the first payment, I don't believe it was.

[fol. 288] Q. Do you recall the dates when the other checks were issued?

A. No, I don't.

Q. Do you recall that the designee of Ralph Berger was adhered to?

A. No, I don't.

Mr. McKenna: Will you mark that as People's Exhibit 35 for identification, please.

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(A check for three thousand dollars was marked People's Exhibit 35 for identification.)

Q. Take a look at People's Exhibit 35.

A. Yes.

Q. Is that a check of the Playboy Club?

A. Yes, it is.

Q. Was that check of the Playboy Clubs issued to Mr. Ralph Berger or his designee as per the schedule established on January 31st, 1962?

Mr. Brill: Objected to.

The Court: Sustained as leading. You may tell us what that check represents, if you know, sir.

The Witness: The check represents the first of the payments set up under the schedule with Mr. Berger at that January meeting.

Q. And is that the check of the Playboy Clubs?

A. Yes, it is.

Q. It was issued in the course of business of the Playboy Clubs?

A. Yes, it was.

Mr. McKenna: I offer that as People's Exhibit 35, your Honor, in evidence.

Mr. Brill: And I object to it.

The Court: Overruled, received in evidence.

(People's Exhibit 35 for identification was then received in evidence and marked People's Exhibit 35 in evidence.)

[fol. 289] Mr. McKenna: People's Exhibit 35 is a check in the amount of three thousand dollars drawn on Playboy Clubs International, Inc., payable to Lee Berco, Inc., dated February 15th, 1962.

By Mr. McKenna:

Q. Is that your signature on the right-hand corner, Mr. Preuss?

A. Yes, it is.

Mr. McKenna: It bears the signature "R. S. Preuss" and it bears the endorsement on the back "Lee Berco, Inc., Lee Berco, Company." It is in the amount of three thousand dollars.

I ask that this be marked as People's Exhibit 36 for identification.

(A check in the amount of three thousand dollars was marked People's Exhibit 36 for identification.)

Q. Can you tell us what People's Exhibit 36 is?

A. Yes.

Q. Is that a check of the Playboy Club?

A. Yes, it is.

Q. Can you tell us what that check is, or represents?

A. This represents the second payment on that schedule of the monies due Mr. Berger.

Q. And was that check issued in the course of business of the Playboy Club?

A. Yes, it was.

Mr. McKenna: I offer this in evidence as People's Exhibit 36, your Honor.

Mr. Brill: I object to it, your Honor.

The Court: Overruled. Received in evidence.

(People's Exhibit 36 for identification was then received in evidence and marked People's Exhibit 36 in evidence.)

[fol. 290]. Mr. McKenna: Will you mark this for identification as People's Exhibit 37.

(A check in amount of four thousand dollars was marked People's Exhibit 37 for identification.)

Mr. McKenna: This People's Exhibit 36 is a check of the Playboy Clubs International, Inc., payable to Ralph Berger in the amount of three thousand dollars, dated March 9th, 1962.

Q. Is that your signature on the lower right-hand corner, Mr. Preuss?

A. Yes, it is.

Mr. McKenna: It bears the signature "R. S. Preuss" and it bears the endorsement on the back "Ralph Berger, Lee Berco Co."

Q. Will you take a look at People's Exhibit 37, please?

A. Yes.

Q. Is that a check of the Playboy Clubs?

A. Yes, it is.

Q. Will you tell us what that check represents?

A. It represents the last of the payments due Mr. Berger under the schedule set up at the January meeting.

Mr. McKenna: I offer this in evidence, if your Honor please, as People's Exhibit 37.

Mr. Brill: I object to it.

The Court: Overruled. Received in evidence.

(People's Exhibit 37 for identification was then received in evidence and marked People's Exhibit 37 in evidence.)

Mr. McKenna: If your Honor please, let the record reflect that People's Exhibit 37 is a check of the Playboy [fol. 291] Clubs International, Inc., payable to the order of Lee Berco, Inc., in the amount of four thousand dollars, dated August 16th, 1962.

Q. Is that your signature on the lower right-hand corner, Mr. Preuss?

A. Yes, it is.

Mr. McKenna: It bears the signature "R. S. Preuss" and it bears the endorsement on the back "Lee Berco Co., Inc., Lee Berco Co."

I ask that this be marked as People's Exhibit 38 for identification.

(An airline ticket was marked People's Exhibit 38 for identification.)

Q. Do you recall if in 1962 any airline tickets were issued to Mr. Berger for trips to New York?

A. Yes, I do.

Q. Do you recall any of the specific dates of those airline tickets?

A. No, I don't.

Q. Will you take a look at People's Exhibit 38 for identification?

A. Yes.

Q. Was that airline ticket issued by Playboy Club?

A. Yes, it was.

Mr. McKenna: I offer this in evidence, if your Honor please, as People's Exhibit 38.

Mr. Brill: I object to it, if your Honor please.

The Court: Objection overruled. Received in evidence.

(Whereupon, People's Exhibit 38 for identification was received in evidence and marked People's Exhibit 38 in evidence.)

Mr. McKenna: People's Exhibit 38 is an airline ticket issued by the American Airlines, bearing on the right-[fol. 292] hand side the stamp: "Playboy Magazine, February 8th, 1962, Chicago, leaving Chicago, Flight Number 50, on February 9th, at 9 A. M., to New York. Returning from New York to Chicago, February 11th, at 4 P. M." The passenger is Ralph Berger.

Q. Now, Mr. Preuss, do you recall receiving from Mr. Berger in 1962 any bills or vouchers?

A. Yes, I do.

Q. Do you recall when it was that you received those bills or vouchers?

A. It was after the January 31st meeting.

Q. Was it before the payment of the remaining twenty and ten thousand dollars?

A. I don't recall.

Q. Do you recall who it was that gave you these vouchers?

A. They came from Mr. Berger.

Q. And do you recall where it was that these vouchers were delivered to you?

A. My office.

Mr. Brill: I press the objection, if your Honor please.

The Court: Overruled.

Mr. McKenna: I ask that these be marked, collectively, People's Exhibit 39 for identification.

Mr. Brill: How many sheets are there?

Mr. McKenna: Four.

(Whereupon, four documents, above referred to, were marked People's Exhibit 39 for identification.)

Q. Will you tell us what these are, Mr. Preuss.

Mr. Brill: I object to his description of matter which is not in evidence.

[fol. 293] The Court: Overruled.

(To the witness) What are they, sir?

The Witness: They are bills Mr. Berger sent me as a result of my request to him at our January 31st meeting.

Q. And these were bills that were retained by the Playboy Club in the course of business?

A. Yes.

Mr. McKenna: I now offer these in evidence, your Honor, as People's Exhibit 39, collectively.

Mr. Brill: I object to them, if your Honor pleases.

The Court: Overruled. They are all received in evidence.

(Whereupon, the four documents above referred to, previously marked, collectively, People's Exhibit 39 for identification, were received in evidence and marked, collectively, People's Exhibit 39 in evidence:)

Mr. McKenna: (To the jury) Let the record show that People's Exhibit 39, the first page, is a letterhead of Lee Berco Co., Inc., dated February 1st, 1962, addressed to International Playboy Clubs, Inc. It bears the notation, "For services rendered, \$12,500."

The second page of People's Exhibit 39 is a letterhead of Lee Berco Co., Inc., dated February 1st, 1962, to International Playboy Clubs, Inc. It bears the notation, "For services rendered, \$10,000."

The third page of People's Exhibit 39 is a letterhead of the Berger, Ross & Steinman, Artists' Representatives, New York Office, 15 West 48th Street, New York 17. West Coast Office, 214 North Cannon Drive, Beverly Hills, California. The date is February 1st, 1962. International Playboy Clubs, Inc.

[fol. 294] "Gentlemen: Statement re finder's fee for Playboy Club fee, \$12,500. Please make check payable and mail to Harry Steinman, 15 East 48th Street."

The fourth sheet bears the letterhead, "Lee Berco, Inc., February 1st, 1962 to International Playboy Clubs, Inc., "For services rendered, \$10,000."

By Mr. McKenna:

Q. Now, Mr. Preuss, in 1962, did you have any communications with Mr. Morhouse?

Mr. Brill: I object to it.

The Court: I'll allow it. Overruled.

A. Yes.

Q. And do you recall what the nature of that communication was?

Mr. Brill: I object to that, and the conversations, if your Honor pleases.

Will your Honor forgive me for not rising—

The Court: It's all right.

Will you fix the time in 1962 when you say you spoke to Mr. Morhouse. If you don't remember the exact date?

The Witness: I can't recall.

The Court: Can you give us the approximate month.

The Witness: I believe it was summer.

The Court: In the summer of 1962.

The Witness: Correct.

By Mr. McKenna:

Q. Do you recall, if I direct your attention to early 1962, did you receive a communication from Mr. Morhouse?

A. It's possible.

Q. Do you have any specific recollection of that communication?

A. I had a communication with Mr. Morhouse several times during that year.

[fol. 295] Q. Can you recall if you had a communication with Mr. Morhouse in February or March of 1962?

A. I don't recall when my early—

Mr. McKenna: I ask that that be marked People's Exhibit 40 for identification.

The Court: Mark it.

(Whereupon, a check above referred to was marked People's Exhibit 40 for identification.)

Q. Does this help you to refresh your recollection relative to a communication in February or March with Mr. Morhouse?

A. Yes, it does.

[fol. 303] Direct examination (Continued).

By Mr. McKenna:

Q. Mr. Preuss, do you recall having any communications with Mr. Morhouse in the early part of 1962?

Mr. Brill: I object to the communications with Mr. Morhouse in 1962 or 1961, if Your Honor please, for the reasons already stated.

The Court: Overruled.

A. Yes, I do.

Q. And do you recall—can you be more specific as to the date of the communications in early 1962?

A. There were some communications in February and March.

Q. Now, with regard to the February communications, could you tell us what was the nature of those communications, whether mail or telephone or in person?

A. Mr. Morhouse.

Q. Well, can you be specific?

A. By telephone, sir.

[fol. 304] Q. All right. Now, where were you when you had this telephone communication with Mr. Morhouse?

A. In my office in Chicago.

Q. Now, can you tell us what you said to Mr. Morhouse and what he said to you in this telephonic communication?

Mr. Brill: That is objected to, if Your Honor please.

The Court: Overruled. Did you recognize his voice?

The Witness: Yes, sir. Mr. Morhouse called me about payment of the second \$10,000 due on the first \$20,000 retainer. He asked whether it could not be paid. I said yes, it could be shortly; and that if he would send me a bill for it, I would pay it within several weeks. He then said, "Why don't you retain \$2,000 of the 10,000 and pay it to Mr. Marrus and only send me eight. I said, "Fine," that that is what we would do.

Q. Is that the total of your recollection as regards to that communication?

A. Yes, it is.

Q. Let me show you Exhibit 41 for identification and ask you does that refresh your recollection as to whether anything else was said in this communication.

(The document referred to was marked People's Exhibit 41 for identification.)

A. I think I said I had requested him for a bill, and the only other thing he said is that yes, he would send such a bill.

Q. Did you have any further communications with Mr. Morhouse after this initial one in 1962?

A. Yes, by mail; he sent me the bill that I had, we had just discussed on the telephone, as well as a new bill for the next year's retainer of \$20,000.

[fol. 305] Q. Did the bill that Mr. Morhouse sent to you contain anything relative to whom the bill was to be paid?

The Witness: Yes.

I am sorry, that is another discussion I also had with Mr. Morhouse in that telephone conversation.

Mr. Brill: Which one is this now?

Q. Are you referring to the first telephone conversation?

A. Yes.

Q. Yes?

A. He said he would send the bill on the letterhead of Hyman Associates, Incorporated, which was the public relations firm, and later the bill came through on the letterhead of Lyman Associates, Incorporated.

Mr. McKenna: Well, let the record reflect that People's Exhibit 40 is a check of Playboy, H. M. H. Publishing Company, payable to the order of Hyman Associates, Inc., in

the amount of eight thousand dollars, dated March 15th, 1962, endorsed on the back "Hyman Associates, Inc., for deposit only."

Q. Now, after that—I am sorry, withdrawn.

You have testimony that you had another conversation with Mr. Morhouse in which you received a further bill?

Mr. Brill: He didn't say that.

The Court: He says he received a bill for the subsequent year, that would be 1963.

The Witness: '62.

Mr. McKenna: '62.

The Court: '62, rather, these payments being for 1961. [fol. 306] The Witness: Correct, even though it was being made in '62.

The Court: In other words, payments for the 1961 bill were made in 1962?

The Witness: One-half.

The Court: One-half?

The Witness: Yes.

The Court: And the balance of eight thousand, plus two thousand, were held for the—plus two thousand withheld for the attorney, was made in 1962?

The Witness: Right.

By Mr. McKenna:

Q. Now, do you recall what the amount of that bill was?

Mr. Brill: Objected to.

The Court: I will allow it.

The Witness: The bill for the next years, for the 1962 retainer, was twenty thousand dollars, as we had previously agreed.

Q. Do you recall the letterhead on which that bill was?

A. That was Hyman Associates, Incorporated, also.

Q. Do you recall yesterday, Mr. Preuss, being questioned regarding the schedule of payments that you set up with Mr. Berger on January 31st, 1962?

A. Yes, I do.

Q. And do you recall giving this answer, when I asked you what that schedule of payment was—

Mr. Brill: Excuse me, your Honor, this does not seem to me to be proper direct examination.

Mr. McKenna: May I approach the bench?

The Court: Well, may I ask this: Does this relate to the payments purportedly due to Mr. Epstein and to the defendant, the balance of ten thousand dollars?

[fol. 307] Mr. McKenna: Yes.

The Court: I think I would like to get something clarified in my own mind, and I think I should ask the question.

My recollection, sir, is that yesterday you testified that there was a schedule set up for the balance of twenty-five thousand dollars, allegedly to be paid to Commissioner Epstein; do you recall that?

The Witness: Correct, yes, sir.

The Court: In connection with that you stated that it was set up, as follows: On February 5th, 1962, a check was to be made to Lee Berco, Inc., for eight thousand dollars?

The Witness: Correct.

The Court: March 5th, 1962, a check was to be made payable to Steinman in the sum of eight thousand dollars?

The Witness: Correct.

The Court: And the following month, April 5th, 1962, two checks, each in the sum of forty-five hundred dollars, was to be made out, one to Lee Berco, Inc., and one to Steinman; you remember your testimony?

The Witness: Correct, sir.

The Court: Now you did testify thereafter that the two checks to be paid on February 5th and March 5th were, in fact, paid?

The Witness: Correct, sir.

The Court: But I don't recall any testimony with respect to the balance of nine thousand dollars. Now, did you want to direct the inquiry toward that, sir?

Mr. McKenna: Yes, your Honor.

The Court: Then I suggest you do so.

[fol. 308] By Mr. McKenna:

Q. Were the final two checks in that schedule which was supposed to be paid to Mr. Steinman and Mr. Berger paid?

A. You mean the two checks for forty-five hundred each?

Q. That is correct.

The Court: Yes, that's correct.

The Witness: No, they were not paid.

Q. Mr. Preuss, you testified that Mr. Morhouse instructed you to pay two thousand dollars to Mr. Marrus?

A. That's correct.

Q. Who is Mr. Marrus?

The Witness: Mr. Marrus is an attorney.

Q. In what capacity did he represent the Playboy?

A. Filing all the necessary forms with the State Liquor Authority for our liquor license.

Q. Did you have a conversation with Mr. Morhouse relative to Mr. Marrus?

A. Yes.

Q. In 1961?

A. Yes.

Q. And can you tell us when that conversation occurred?

A. I believe it was a telephone conversation after Mr. Morhouse had been to Chicago.

Q. And did he have that conversation with you?

A. Yes, he did.

Q. And can you tell us what he said to you and what you said to him in this conversation?

Mr. Brill: I object to that, if your Honor please.

The Court: I will allow it, overruled.

The Witness: He said to contact Mr. Marrus, who was a liquor attorney in New York, Mr. Marrus would file necessary papers for the liquor license application.

[fol. 309] Q. Now, previous to June of 1961 had Playboy any other attorney in regard to its liquor license application?

A. Yes, earlier we had been in contact with another attorney, Mr. Hyman Siegal.

Q. And to your knowledge, in your capacity as the Financial Manager of the Playboy Club, do you know whether Mr. Siegal was paid any money in connection with his services?

Mr. Brill: Objected to, if your Honor pleases.

The Court: I will allow it, overruled.

The Witness: Yes, he was paid a retainer of five thousand dollars which he later, however, returned.

Mr. McKenna: May I ask that this be marked as People's Exhibit 42 for identification?

(A check in the amount of \$5,000. was marked People's Exhibit 42 for identification.)

Q. Now, I show you People's Exhibit 42 for identification.

A. Yes.

Q. Can you tell us what that is?

Mr. Brill: I object to the question.

The Court: Overruled.

The Witness: A check of the Playboy Clubs payable to Hy Siegal for five thousand dollars, dated November 7th, 1960.

Mr. McKenna: Now, I offer it in evidence, your Honor, as People's Exhibit 42.

Mr. Brill: I object to it, if your Honor please.

The Court: Overruled, received in evidence.

[fol. 310] (People's Exhibit 42 for identification was received in evidence and marked People's Exhibit 42 in evidence.)

Q. Now, Mr. Preuss, you just testified that the retainer that was given to Hy Siegal was returned by him; is that correct?

A. That is correct.

Q. Do you recall when it was that that retainer was returned by Mr. Siegal?

Mr. Brill: Same objection.

The Court: I will allow it.

The Witness: I believe it was in March, 1961.

Q. What were the bookkeeping entries made by the Playboy Clubs in regard to cash disbursements to Mr. Berger and Mr. Morhouse?

Mr. Brill: I object to that, if your Honor please.

The Court: I will allow it.

Mr. Brill: The bookkeeping entries will show, they should be produced.

The Court: If he is personally aware of it I will allow it. Have you got your books and records with you?

The Witness: No, sir.

Mr. Brill: I press the objection.

The Court: Where are these records?

Mr. McKenna: In Chicago, these are huge records, it would be almost physically impossible to produce them, your Honor.

The Court: I will allow you to answer.

[fol. 311] The Witness: These checks were charged either to the account for legal expenses, or the account for promotional expenses. In the cases—

The Court: What?

Q. I am sorry, go ahead.

A. In the case of the expense checks these were charged to the account for travel and entertainment.

Q. Were these bookkeeping entries correct bookkeeping entries?

A. No, sir.

Mr. McKenna: Your Honor, that completes the examination of the witness.

[fol. 347] Redirect examination.

By Mr. McKenna:

Q. Mr. Preuss, before you appeared in the grand jury did you consult with your attorney?

Mr. Brill: I object to it. It's improper redirect.

The Court: Overruled.

(To the witness) You may answer.

A. Yes, sir.

Q. Did he accompany you to the grand jury?

Mr. Brill: I object to it, if your Honor please.

The Court: I want to ask the district attorney to make an offer of proof at the side, with respect to this line of inquiry.

(Whereupon, the following proceedings took place at the bench, on the record but out of the hearing of the members of the jury, between the Court and counsel for both sides):

Mr. McKenna: Your Honor, I intend to show before the witness testified in the grand jury, on advice of counsel, he invoked his privilege against self-incrimination, which I think had some bearing on his state of mind as to whether or not he was a victim of extortion or in a conspiracy to bribe.

Mr. Brill: I object to it.

The Court: I'll allow it. Overruled.

(Whereupon, the following proceedings took place on the record in open court):

By Mr. McKenna:

Q. Before you went into the grand jury, did you tell your attorney essentially what you've told us today?

[fol. 348] Mr. Brill: I object to what he said to his attorney.

The Court: Objection sustained.

Mr. McKenna: Just asking yes or no.

Mr. Brill: He can't. I maintain the objection.

The Court: And I sustain the objection.

Q. Did you tell your attorney the facts—

Mr. Brill: I object to anything he said to his attorney as not binding upon Mr. Berger.

The Court: I'll allow it.

(To the witness) Just yes or no, sir. Did you speak to your lawyer about the facts of this case? Yes or no.

A. Yes, sir.

Q. When you went before the grand jury, do you recall Mr. Scotti asking you these questions and your giving these answers—

Mr. Brill: Your Honor has ruled on the offer of proof and has granted me an exception.

Q. (Continuing) "Question: Mr. Preuss, will you give the gentlemen to your right your full name and address?"

"Answer: Robert S. Preuss, P-r-e-u-s-s, 7970 Oak Avenue, River Forest, Illinois.

"Question: Now what is your position, Mr. Preuss?"

"Answer: I refuse to answer any questions or produce any evidence"—I'm sorry—"or produce evidence of any other kind, on the ground that I may be incriminated thereby."

Do you recall those questions and giving those answers, Mr. Preuss?

A. Yes, sir.

Q. Mr. Preuss, do you recall being asked either in my office or in the Grand Jury—

[fol. 349] Mr. Brill: I object to this, if Your Honor please. How could this possibly be binding?

The Court: Let me hear the entire question.

Q. —whether or not you had told your attorneys in Chicago of your dealings with Mr. Berger?

Mr. Brill: I object to this.

The Court: Objection sustained.

Mr. Brill: Thank you.

Q. Did you tell your attorneys in Chicago of your dealings with Mr. Berger?

Mr. Brill: That is objected to.

The Court: Just yes or no. You may answer that yes or no.

A. Yes.

Q. When?

Mr. Brill: I object to it, if Your Honor please.

The Court: I will allow it. Overruled.

A. Just prior to visiting our attorney in New York and explaining the facts to him.

Q. Can you place the time, Mr. Preuss?

Mr. Brill: I object to that, if Your Honor please.

The Court: I will allow it. Overruled.

A. I believe it was late in 1962.

Q. Had you been served with a subpoena by the District Attorney's office at that time?

Mr. Brill: Objected to as being immaterial.

The Court: Overruled.

Mr. Brill: Not binding on the defendant.

[fol. 350] A. I believe prior to that the Playboy Club of New York had been served with such a subpoena, sir.

Q. Now, do you recall entering into a stipulation with the State Liquor Authority on the 14th of November, 1962?

A. Yes, I do.

The Court: Deemed marked in evidence People's Exhibit 43.

(The document referred to was admitted in evidence and deemed marked People's Exhibit 43.)

The Court: It is now in evidence. It can be read to the jury, if you feel it has any pertinent value.

Mr. McKenna: Yes. (Reading)

"State of Illinois,

"County of Cook, ss.:

"ROBERT S. PREUSS, being duly sworn, deposes and says:

"That he is the Secretary of Playboy Club of New York, Inc., and is fully acquainted with the proposed operations of said club.

"That the restaurant to be operated by said club is not intended to and will not be operated as a private club.

"That the keys issued to applicants are to be used for identification purposes only in connection with the extension of credit to the keyholders.

"That no liquor alone will be sold on credit.

"That the restaurant will be open and operating on or about December 7, 1962.

"That the premises will be completed according to plans filed with the application.

[fol. 351] "Sworn to before me this
14th day of November, 1962."

Q. Is that your signature at the bottom, Mr. Preuss?

A. Yes, it is.

Q. Was a policy established with respect to this stipulation for the Playboy Club in New York?

A. Yes, it was established.

Q. Will you tell us what that policy was?

Mr. Brill: I object to it.

The Court: I will allow it. Overruled.

A. Under that stipulation, we would operate in a manner similar to the operation we had in Chicago.

Q. Would you explain what that operation is.

Mr. Brill: Now, I object to that as not binding.

The Court: I will allow it. Overruled.

A. In Chicago we had been operating under a restricted-admission policy, and under that stipulation "open to the public," which is the portion of it at issue—

Mr. Brill: I object to that. Certainly—

The Court: I will strike out "which is the portion at issue." Strike out "which is the portion at issue."

The Witness: Under the term "open to public," we felt and had proven in court—

Mr. Brill: I object to what they felt.

The Court: Sustained. Strike it out.

The Witness: We, under legal advice—

Mr. Brill: I object to their legal advice.

The Court: Sustained. Strike it out as not responsive.

[fol. 352] Q. What would you do with regard to the public?

Mr. Brill: I object to what they would do with regard to the public.

The Court: I will allow it.

Mr. Brill: All that they did with regard to the public, now, Your Honor?

The Court: You understand the question, sir?

The Witness: I think so.

The Court: All right. You may answer it.

The Witness: The public is allowed in at any time to a Playboy Club upon the purchase of a \$25 admission fee. It was our thought that "open to the public"—

Mr. Brill: I object to their thought.

The Court: Sustained. Strike it out.

Mr. Brill: Your Honor, in order to complete the record with respect to the files of the S. L. A., we were to make a stipulation with respect to certain dates, and Mr. McKenna now does not desire to do that. But I would, nevertheless, like to have deemed marked in evidence, in addition to the affidavit which Mr. Preuss referred to, the affidavit of Victor Lownes, Mr. McKenna, sworn to on the 7th of December, 1962.

• • •
Mr. Brill: • • • All I am asking for is that there be deemed marked the affidavit of Victor Lownes of December 7, 1962, which is a part of the files of the State Liquor Authority, and this would be deemed marked Defendant's Exhibit J.

(The document referred to was admitted in evidence and deemed marked Defendant's Exhibit J.)

Mr. Brill: And it reads:

[fol. 353] "VICTOR A. LOWNES III, being duly sworn, deposes and says:

"That he is the President of Playboy Club of New York, Inc., and is fully acquainted with the proposed operations of said club.

"Since submitting the representations, dated December 5, 1962 (that was the affidavit made by Mr. Preuss, to which he testified), we have discussed with the State Liquor Authority our interpretation of the phrase 'open to the general public,' and we agree to operate according to their interpretation, as indicated in said discussion of that phrase, which is not as reputed to have been stated by our employee in the December 6 issue of the New York Post, until our right to operate otherwise is legally established."

It bears the signature of Victor A. Lownes III, and is sworn to on the 7th day of December, 1962, before a notary public, Jerome J. Marrus.

Now, as Defendant's Exhibit K, I ask that there be deemed marked the affidavit of Victor A. Lownes III, a part of the file of the S. L. A., an affidavit sworn to by Victor A. Lownes III on the 5th day of December, 1962, before Douglas M. Owens, Notary Public.

(The affidavit referred to was admitted in evidence and deemed marked Defendant's Exhibit K.)

Mr. Brill: (Reading)

"VICTOR A. LOWNES III, being duly sworn, deposes and says:

"That he is President of Playboy Club of New York, Inc., and is fully acquainted with the proposed operations of the said club.

[fol. 354] "That the restaurant to be operated by said club is not intended to and will not be operated as a private club.

"That the keys issued to applicants are to be used for identification purposes only in connection with the extension of credit to the keyholders.

"That no liquor alone will be sold on credit.

"That the restaurant will be open and operating on or about December 7, 1962.

"That the premises will be completed according to plans filed with the application.

"It is further agreed and stipulated that the applicant herein hereby makes a continuing representation that the entire licensed premises will be open to the general public at all times during regular business hours."

Mr. McKenna: May I have the date of that?

Mr. Brill: That is the 5th of December, 1962.

• • • • •

[fol. 360] VICTOR LOWNES, residing at 3 Montpelier Square, London, SW 7, England, called as a witness in behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct examination.

By Mr. McKenna:

Q. Mr. Lownes, what is your present occupation?

A. I'm Vice-President and Managing Director of Playboy Enterprises in Europe.

Q. How long have you been associated with Playboy Enterprises?

A. I've been with Playboy since November of 1955.

Q. During 1960, 1961 and 1962, what were your duties at the Playboy organization?

A. During 1960, 1961 and '62 I was Vice-President and Promotional Director of Playboy Clubs International and H.M.H. Publishing Company, Inc., which is the publisher of Playboy Magazine.

Q. Now will you tell us what your duties were as Promotional Director?

A. As Promotional Director, I was in charge of the magazine, first. As Promotional Director of the magazine, I was in charge of advertising and circulation, promotion and by-product promotion.

Q. And with respect to the Playboy Clubs?

A. I was in charge of advertising and promotion for the clubs and actively involved in determining method of management, concept, et cetera, for the clubs, and also sales members (key sales, that is) and also I purchased all the talent for the clubs.

Q. Will you please speak up a little louder. Did you hold any position with the Playboy Club of New York?

A. I was President of the corporation, Playboy Club of New York, Inc.

[fol. 361] Q. Did you have any connection with the establishment of the Playboy Club in New York?

A. Yes. I was actively involved in the establishment of the clubs everywhere.

Q. Can you tell us what you did in connection with establishing the Playboy Club in New York.

A. Well, among other things, I picked out the site of the New York Club and negotiated the purchase of the property here, and I helped plan the layout of the rooms within the club and the flow of traffic and usage of each of the rooms, and I arranged for the promotion of the club here. Also was involved in routine matters, applications and whatnot.

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Q. Mr. Lownes, in 1960—I refer to the latter part of 1960—had you had any contact with an attorney in New York named Hyman Siegel?

Mr. Brill: I object to it.

The Court: Overruled.

(To the witness) You may answer it yes or no, sir.

Mr. McKenna: In 1960.

A. Yes.

Q. Especially in the latter part of 1960, did you have any contact with an attorney in New York named Hyman Siegel?

A. I don't believe that I directly had any contact with him.

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A. I don't believe that I directly had any contact with Hyman Siegel at the end of '60.

Q. Did you have any contact with him in 1961?

A. Yes, I did.

Q. During the year 1960—

The Witness: Oh, wait a minute. Excuse me. Just a minute. May I change something?

[fol. 362] Mr. McKenna: Yes.

The Witness: I just recall something. At the end of 1960, when we purchased the property for the New York Playboy Club, I do remember Hyman Siegel being present at a meeting which we had with an attorney named A. Bienstock and somebody Friedman's office.

The Court: Is it your testimony that in the latter part of 1960 you met Mr. Siegel?

The Witness: Yes, I did.

By Mr. McKenna:

Q. Now do you recall having met in 1960 Mr. Ralph Berger?

The Witness: What month was that?

Mr. McKenna: In 1960, at all.

A. At all. I'm quite sure I met Mr. Berger in 1960.

Q. Did you have a conversation with him in 1960 that you can recall?

A. I believe that a meeting, that I remember that Mr. Berger was at, was in 1960. I was in a meeting with Mr. Berger.

The Court: Where was that meeting, sir?

The Witness: In Chicago. At a meeting in Chicago with—

Mr. Brill: May we have the time fixed, your Honor.

The Court: Can you fix the approximate month in 1960, when you say you met Mr. Berger at a meeting. To the best of your ability.

The Witness: No, sir, I can't. It was towards the end of the year some time, the latter part of the year.

[fol. 363] By Mr. McKenna:

Q. Now do you recall, in January 1961, having a meeting in New York with a person named Martin Epstein?

A. Yes, sir, I did.

Q. I show you People's Exhibit 2 for identification (handing to witness). Is this the person you met named Martin Epstein?

A. That's the man.

Q. Now do you recall where this meeting occurred?

A. Yes. It occurred in Mr. Epstein's office.

Q. Do you recall who was at that meeting?

A. Yes, I do.

Q. Who?

A. Mr. Hefner was at the meeting. I was at the meeting. Mr. Siegel was at the meeting, and a Mr. Roberts.

Q. Did you have a discussion at that meeting with Mr. Epstein relative to your liquor license in New York?

Mr. Brill: I object to it.

The Court: I'll allow it.

(To the witness) Just say yes or no.

The Witness: Repeat the question, please.

Q. Did you have a discussion with Mr. Epstein at that meeting relative to obtaining a liquor license in New York?

A. Oh, yes.

Q. Who arranged that meeting?

Mr. Brill: I object to it.

The Court: Overruled.

A. Well, I believe it was directly arranged through Hyman Siegel.

Q. That's enough. Now will you tell us what you said to Commissioner Epstein and what Commissioner Epstein said to you at that meeting.

A. Of course, I can't remember the exact words.

— [fol. 364] Q. In substance.

A. But I can remember the substance of it. At that meeting we explained to Commissioner Epstein—

Mr. Brill: May we ascertain who "we" are.

The Court: (To the witness) You or Mr. Hefner?

The Witness: Well, I think I did most of the talking.

The Court: What did you say to Commissioner Epstein at that time?

The Witness: I told him that we had won our court case in Illinois, holding—upholding our right to operate as a public club charging a one-time admission charge, insisting upon a one-time admission charge to all persons, without regard to race, creed or color, and that we were—that we were held within our right to do this and bar persons who did not purchase a key, even though the authorities there maintained that we couldn't operate in that fashion; and that we felt that the laws of the State of New York were analogous to the laws of Illinois. Our attorneys in Chicago had studied the New York liquor laws and believed that we could operate the same way in New York, as the laws were parallel, and that we tried to explain the legal theory under which we had won our right to operate as we do operate to Commissioner Epstein. We explained that to him.

Q. What, if anything, did Commissioner Epstein say to you?

A. He said that New York and Illinois weren't the same states and that what was legal in New York—legal in Illinois was not necessarily legal in Chicago—in New York—and that we couldn't—we couldn't operate that way in New York.

Q. Did he say anything else relative to your operation in New York?

A. Yes. He said that if we obtained a not-for-profit private club license in New York State, that we could then operate the way we chose to operate. And we remonstrated and said that we couldn't take that particular path of [fol. 365] operation because then we would find ourselves living with a situation that was untenable, impossible, because we would then be entitled to certain rights and privileges that are given a not-for-profit private club even into the area of federal excise taxes, and we couldn't take those because it would be merely a device to shift and evade, and we didn't want to operate that way. We wanted to operate legally. We were convinced that our method of operation was legal and we wanted to do it our way.

Q. Did Commissioner Epstein say anything in response to this?

A. Well, he said that the Gaslight Club had originally come in with the same idea in mind, that they were going to operate with a regular for profit license and still bar non-key holders, and that they had discovered they couldn't do that.

Q. Did Hyman Siegel say anything at this meeting?

A. Yes. As a matter of fact, in connection with this very area, when—when Commissioner Epstein mentioned that the Gaslight Club was now going to do it the way he recommended we do it, which is to get a not-for-profit private club license, that they had shifted their method, you know, their application, their licensing structure, they were trying to shift over to the not-for-profit private club method of operation, Hyman Siegel commented that—that he was willing to bet the Commissioner a hat, or something trivial, that they would get their license now.

Q. Did you at that meeting tell Commissioner Epstein how you intended to operate in New York?

A. Yes. We told him how we intended to operate.

Q. Mr. Epstein, what did he say?

A. He said no, weren't going to operate that way in New York State; we were going to operate his way or not at all.

[fol. 366] Q. Is that the total of your recollection of that particular meeting?

A. At this time, yes.

Q. Now, after that meeting with Commissioner Epstein, did you return to your associates in Chicago?

A. Yes, sir, I returned there.

Q. Did you have a meeting with your associates in Chicago relative to your meeting with Commissioner Epstein?

A. Yes.

Q. Who was present at that meeting?

A. Well, Preuss, and Morton, and myself were there.

Q. Was Mr. Hefner there?

A. Oh, yes, Mr. Hefner.

Q. Now, tell us what you said at that meeting in Chicago.

Mr. Brill: Objection, if Your Honor please.

The Court: I will allow it. Overruled.

And this is on the same theory as I have heretofore held—conversations allegedly which took place during the period charged in the indictment between persons who the People contend are co-conspirators.

I am going to allow it. Overruled.

A. Oh, I said at that meeting that Mr. Epstein was trying to sell us something that we couldn't buy.

Q. Did Mr. Morton say anything at that meeting?

A. Well, everybody agreed that, Mr. Morton and Mr. Preuss and Mr. Hefner, we all agreed, and myself, we all agreed that it was impossible just to start out on a track where we pretended to be a not-for-profit private club, which was a big joke, because, obviously, we are in the business for money, and any pose in an attempt—as a matter of fact, when at the meeting with Commissioner Epstein—

Mr. Brill: No, no. Let's have the one conversation, please, Your Honor.

[fol. 367] Q. Just this meeting among the Playboy managers.

A. And any attempt to purport that we operate as a not-for-private, not-for-profit private club would ultimately be shown up to be a sham; we would have income-tax troubles and we would have all kinds of legal difficulties; so we possibly couldn't even think of going that road.

Q. Was there any decision at that meeting relative to the future course of conduct of the Playboy Club?

Mr. Brill: I object.

Q. Just yes or no.

The Court: You may answer just yes or no.

A. Yes.

Q. Did you have any conversation with your associates relative to this future course of conduct?

Mr. Brill: I object to that.

The Court: I will allow it. Overruled.

Q. Just answer yes or no.

A. Yes.

Q. Will you tell us what you said to your associates relative to the—

Q. Relative to this future course of conduct.

A. Well, I said that I thought that we should just forget all about trying to make any kind of deal with the Commissioner through Mr. Berger; and that what we should do is apply for a regular license in the regular way, the kind of license that we knew we should have, a regular B. and L. license; and that we should fight the thing through the courts, as we had had to do in Illinois, if necessary.

Q. Did Mr. Morton say anything in response to this?

A. Everybody agreed that that should be our policy.

Q. Did there come a time in May of 1961 when Mr. Morton came to you concerning Mr. Berger?

A. Yes.

[fol. 368] Q. And did you have a conversation with Mr. Morton relative to Mr. Berger in May of 1961? Just answer yes or no.

A. Yes.

Q. And where did this conversation take place?

A. At the Playboy Building in Chicago.

Q. Now, will you tell us what Mr. Morton said to you on this occasion.

Mr. Brill: That is objected to, if Your Honor please.

The Court: I will allow it. Overruled.

A. Mr. Morton said that Mr. Berger was back now and that he was going to take us to Mr. Big, the No. 1 man in the state and the man who would look after us and see that we got what we were supposed to have here.

* * * * *

Q. Did there come a time after this May, '61, conversation with Mr. Morton when Mr. Morton returned and had a conversation with you relative to a person by the name of Judson Morhouse?

Mr. Brill: That is objected to.

The Court: I will allow it. Overruled.

A. Yes.

Q. And can you place the time of this conversation with Mr. Morton?

A. Well, it was after the first meeting.

Q. Can you say approximately how long after the first meeting?

A. Well, I think it was within weeks after the—a week or so afterwards.

Q. Within a week or so afterwards. You are going to have to keep your voice up, Mr. Lowmes.

A. Yes.

Q. Do you recall where this conversation with Mr. Morton occurred?

A. At the Playboy Building, 232 East Ohio Street, in Chicago.

[fol. 369] Q. Who else was present at this conversation?

A. Mr. Hefner, Mr. Preuss.

Q. Is that it?

A. Mr. Morton and myself.

Q. Now, will you tell us what Mr. Morton said to you on this occasion.

Mr. Brill: That is objected to.

The Court: Overruled.

A. Oh, he said that he had been to see Mr. Morhouse with Mr. Berger and Dick Conlan, I believe, who was then going to manage the New York Playboy Club.

Mr. Brill: He was then what? I can't hear this witness.

The Witness: He said that he had been to see Mr. Morhouse with Mr. Berger and Dick Conlan.

Q. Now, did he say anything concerning his conversation with Mr. Morhouse?

A. Yes. He said that Mr. Morhouse was going to represent us in New York and that with our, in connection with our legal operations here he was going—he mentioned that he was going to get a fee of \$20,000 a year for a minimum of five years; and he also mentioned that he wanted some kind of stock option.

Q. In this conversation between the management of Playboy Club, was the name of Mr. Epstein mentioned?

A. Yes, it was mentioned.

Q. Do you recall what was said and by whom?

A. It was—Morton explained, Morton told us that this, that we were going to have to go ahead with the deal that Mr. Berger had arranged with Mr. Epstein, and that this was separate in the sense that we were going to have to pay Judson Morhouse his money and Mr. Epstein his money, too.

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[fol. 370] Q. Did you say anything at that meeting?

A. Yes, sir, I did. I said I thought that we ought to blow the whistle on the whole bunch.

Q. Did Mr. Hefner say anything at that meeting?

A. He said, "Who do we blow the whistle to?"

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Q. Tell us what Mr. Preuss said, to be specific.

A. Well, Mr. Preuss said, in substance, that he didn't know how we could possibly, how we could possibly blow the whistle, as it was pretty obvious that there wasn't—that the corruption with regard to liquor licensing in New York State ran quite a way up the ladder.

Q. Does that exhaust your recollection concerning this meeting?

A. Yes, it does.

Q. After this meeting, did you accompany Arnold Morton to New York?

A. Sir, I remember something else about that other meeting.

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Q. Did you say anything? You can only relate conversations.

A. Yes. I said, I said that I agreed with my associates that we had to go ahead with the Morhouse-Epstein.

Q. Now, does that exhaust your recollection?

A. Yes, sir.

Q. Now, after that conversation, did you go, did you accompany Arnold Morton to New York?

A. Yes, I did.

Q. Did you meet anybody in New York?

A. Yes. I met Judson Morhouse.

Q. Was anybody present besides yourself and Mr. Morhouse?

A. Arnold Morton.

Q. Did you have a conversation with Mr. Morhouse on that occasion?

A. Yes, I did.

Q. Do you recall where it was that you had this conversation?

A. In Mr. Morhouse's office.

[fol. 371] Q. And do you recall where Mr. Morhouse's office was?

A. Somewhere near the Commodore; not the Commodore, the—somewhere near Grand Central Station, Commodore Hotel, somewhere near there.

Q. And do you recall approximately how long after this conversation related among the Playboy management that you went to New York to meet Mr. Morhouse?

A. Very short time; within a week after.

.

Q. Now, will you tell us the conversation that you had with Mr. Morhouse on that occasion.

Mr. Brill: Objection, if Your Honor please.

A. At the meeting with Mr. Morhouse, I explained to Mr.—told Mr. Morhouse about our legal victory in Illinois in terms of our method of operation and told him about the meeting that Hefner and I had had with Mr. Epstein in January, and told Mr. Morhouse that I was, that we were unsuccessful in convincing Mr. Epstein of the legality of our method of operation, and that I hoped that Mr. Morhouse would be able, in talking to Commissioner Epstein, to make clear our method of operation and get the message through as to how we operate and how we wanted to operate in New York.

Q. Did Mr. Morhouse say anything at this meeting?

A. Yes, he did. He said that he would try to present our, our case to Mr. Epstein and that he hoped that we would get our liquor license the way we wanted to get it, on a regular R. and L. basis, and operate the way we wanted to operate; but that if for some reason we were unable to operate the way we wanted to operate, then it might be necessary for us to, it might be necessary for us to lobby the state legislature to get a change in the law to make our method decidedly legal, unquestionably acceptable, although I never felt that—

[fol. 372] Mr. Brill: What he said. That is what we want.

Q. Now, was there any further discussion at this meeting relative to any monies?

A. Yes. At this meeting it was reiterated that, Mr. Morhouse discussed again, Mr. Morhouse and Mr. Morton discussed what they had discussed in the previous meeting about the terms of what Mr. Morhouse was to receive for his services in our behalf. Mr. Morhouse indicated that he was to get \$20,000 a year for a minimum of five years, and he was to get stock options in the amount of \$100,000 worth of stock, when we, when, if we should go public and stock should be issued to the general public; and that he, Mr. Morhouse, was involved in some sort of gift-shop chain,

and that he would be very interested in discussing with us putting these gift shops into the Playboy Clubs.

Q. Was there any further discussion at this meeting that you recollect?

A. Well, there was some discussion that I recollect about the Automobile Club of New York State. We discussed that in some detail.

Q. But does that exhaust your recollection concerning this meeting?

A. It does now; yes, sir.

Q. After that meeting, did there come another occasion when you met Mr. Morhouse?

A. Yes, sir, I met him in Chicago.

Q. And approximately how long after this meeting did you meet him in Chicago?

A. Well, that was sometime later, several, quite some time later, several months later.

Q. All right. Do you know who was present at that meeting?

A. Yes. Morton was there and Preuss and myself and Hefner.

Q. And Mr. Morhouse?

A. And Mr. Morhouse, yes.

Q. Now, can you tell us the conversation that occurred at that meeting in Chicago, and please be specific as to who said what?

[fol. 373] Mr. Brill: That is objected to.

The Court: Overruled.

A. Mr. Preuss, I believe it was; yes, I am sure it was; Mr. Preuss told Mr. Morhouse that we would not be able to do anything about stock options for him; that we had investigated the questions regarding stock options and that we couldn't do this.

Q. Did Mr. Morton say anything at this meeting that you recall?

A. I don't remember, sir.

Q. Did you say anything at this meeting that you recall?

A. I don't recall any big points.

Q. Did Mr. Morhouse say anything at this meeting that you recall?

A. Yes. Mr. Morhouse said with regard to the stock—

Mr. Brill: Objected to.

The Court: Overruled.

The Witness: Mr. Morhouse said with regard to the stock options that he understood and that we would work out some other arrangement for his getting that portion of his compensation at a later date.

Q. Did Mr. Hefner say anything at that meeting that you recall?

A. No, sir.

Q. Now, throughout the rest of 1961, do you recall having any meeting with Mr. Berger?

A. No, sir.

Q. Do you recall any meeting with Mr. Berger in 1962?

A. No, sir.

Mr. McKenna: That completes my examination of this witness, Your Honor.

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(Thereupon, at 3:25 p. m., the jurors and the alternate jurors left the courtroom and the following proceedings took place in their absence and without their hearing.)

[fol. 374] Mr. McKenna: May the record reflect I am turning over to Mr. Brill as Court's Exhibit 10 for identification the Grand Jury testimony of Victor Lownes, given on March 11, 1963, pages 2383 through 2463.

(The minutes referred to were marked Court's Exhibit 10 for identification.)

Mr. Brill: With respect to Court's Exhibit 5 for identification, let the record show that Mr. McKenna has advised

me that this testimony was taken before the Grand Jury on April 1, 1963.

(Whereupon, the jurors and alternate jurors entered the courtroom and took their respective seats in the jury box.)

Mr. McKenna: Your Honor, Mr. Brill and I have agreed upon a stipulation which we should read in front of the jury, and it is that the third sheet of People's Exhibit 39, a letterhead of Berger, Rose and Steinman that was introduced into evidence, with regard to the Berger of the letterhead, Berger, Rose and Steinman, is not Mr. Ralph Berger, and is no relation to Mr. Ralph Berger, and has no connection with Mr. Ralph Berger.

[fol. 375]

October 19, 1964
11:47 A. M.

Trial continued.

(Whereupon, the following proceedings took place at the bench, on the record, between the Court and counsel for both sides, but out of the hearing of the members of the jury):

Mr. Brill: Your Honor, this morning I inquired of the court reporters as to when there would be completed the transcripts taken by each of the three reporters (court reporters, that is) who were present at the time of the dry run, last Thursday evening.

I was informed by two of them that no transcriptions have yet been made because it was their understanding that it was the Court's instruction not to transcribe whatever they have been able to take from that garbled, unintelligible, incomprehensible, obliterated and otherwise inaudible—those tapes.

In the circumstances, if your Honor pleases, I would ask your Honor, respectfully, to withdraw such instruction, if in fact such instruction had been given, and to instruct the three court reporters to make the transcripts of what they heard and indicate otherwise what they did not hear, so that we may have such transcripts before the Court to enable the defendant and his counsel to make such argument as, in their judgment, they deem should be made to the Court.

The Court: To keep the record straight, I made no absolute order or direction to the reporters that they are not to transcribe what they heard.

[fol. 376] I did have a complaint from each of the three reporters, expressing their difficulty in making a transcription because of their inability to hear what was said, and I did say, "Well, you can't transcribe what you didn't hear."

Mr. Brill: That's right.

Mr. McKenna: Can I be heard.

Your Honor, the acoustic conditions in this courtroom are such that there are portions of the tape that are inaudible.

Now, the People intend to submit those tapes through the mechanism of an earphone—earphones—which I think will clear up any inaudibility, and I think, in all fairness, there shouldn't be any transcription prepared until the stenographers have heard these tapes through the earphones, and in all fairness to the People, I think that the stenographers should hear these things through the earphones before they start preparing any transcript.

The Court: Mr. McKenna, the proceedings which took place last Thursday evening was in the presence of a reporter, and if counsel for the defense wants those proceedings transcribed, I will direct that they be transcribed, for whatever they are worth.

Mr. Brill: Very good, sir. I want them transcribed, your Honor, let the record so reflect, and I want a transcription

from each of the three court reporters who were here to take those tapes.

(Whereupon, the following proceedings took place on the record, in open court):

[fol. 392] Redirect examination.

By Mr. McKenna:

(Whereupon, the following proceedings were had at the Bench, out of hearing of the jurors and the witness):

Mr. McKenna: I wish to interrogate the witness concerning his invocation of his privilege against self-incrimination in the Grand Jury. I feel, Number 1, it goes to his state of mind; Number 2, I do not think the jury should speculate as to why we did not indict this defendant, this witness, if he is a co-conspirator; and, Number 3, Mr. Brill read portions of the Grand Jury testimony. I think this places the whole thing in perspective.

The Court: To save time, let me ask you this question: Do the Grand Jury Minutes reflect the fact that he refused to answer on the ground that his answers might incriminate him?

Mr. McKenna: Yes.

The Court: Was he thereafter granted immunity under Section 2447 of the Penal Law?

Mr. McKenna: Yes.

Mr. Brill: Well, I don't think under any circumstances now that it would be proper to permit this witness to testify with respect to this matter. It could only be for the purpose of creating an atmosphere inflammatory and prejudicial to the defense. It is not part of the proper re-direct examination and under no circumstances, in my view, do I conceive how it could be legally admissible on this trial.

[fol. 393] The Court: I will allow the inquiry, overruled. Proceed.

(Whereupon, proceedings were resumed in open Court, as follows):

By Mr. McKenna:

Q. Mr. Lownes, I would like to direct your attention now to your appearance before the Grand Jury on March 11th, 1963; do you recall—and I refer to page 2385, whether these questions—do you recall whether these questions were asked of you and whether you gave these answers:

“Question: Mr. Lownes, will you give this gentleman to your right your full name and address?

“Answer: Victor Lownes, III, and my address is 221 East Wlaton Street, Chicago, Illinois.

“Question: What is your business?

“Answer: On advice of counsel I refuse to answer any questions or produce evidence of any other kind on the ground that I may be incriminated thereby.”

Do you recall those questions and giving those answers?

A. Yes, sir, I do.

Q. Do you recall Mr. Scotti then saying this to you:

“I want you to know, Mr. Lownes, before I request the Grand Jury to direct you to answer, that this Grand Jury has already voted to confer immunity upon you should you invoke your Constitutional privilege. Accordingly, I request the Grand Jury, through the Foreman, to direct this witness to answer.”

Whereupon, the Foreman said: “I direct you, Mr. Lownes, to answer the question.”

And Mr. Scotti said: “Now, Mr. Lownes, I want you to know that you are now legally obligated to answer the question. However, your answer will immunize you against [fol. 394] prosecution for any crime that your answer may disclose; do you follow me?

"The Witness: Yes, sir."

Do you recall Mr. Scotti saying that, as well as the Foreman?

A. Yes, sir, I do.

Q. So then your testimony in the Grand Jury followed upon this colloquy at the initial stages of the Grand Jury; is that correct?

A. Yes, sir.

Q. Was there a conference among the officers of Playboy—I am referring to Mr. Morton, and Mr. Preuss, and yourself—before you appeared in the Grand Jury?

Mr. Brill: That is objected to, if your Honor please.

Q. Just yes or no?

The Court: You may answer it yes or no, sir.

The Witness: Yes, sir.

Q. Was your counsel present?

A. Yes, sir.

Mr. Brill: That is objected to.

The Court: I will allow it, overruled.

The Witness: Yes, sir.

Q. What was your motive and agreement to go along with your associates in paying Mr. Berger fifty thousand dollars?

A. Well, my motive in agreeing to go along with my associates was that we had such a tremendous investment at stake in New York and there was a strong implication that if we did not go along with Mr. Berger that we would, that we would not get a liquor license in New York, and that we would lose our investment that we had there.

[fol. 395] Q. Did Playboy Clubs ever go to court to get their license?

Mr. Brill: I object to that, if your Honor please.

The Court: I will allow it.

Q. In 1961 did Playboy Clubs introduce a legal suit to get their license?

A. No, sir.

FRANK JACKLONE, residing at 405 East 56th Street, New York, N. Y., called as a witness in behalf of the People, having been first duly sworn by the Clerk of the court, was examined and testified as follows:

Direct examination.

By Mr. McKenna:

Q. Mr. Jacklone, what is your occupation?

A. I'm a salesman for a coat and suit house.

Q. Do you presently hold a liquor license from the State of New York?

A. Yes, I do.

Q. And what is the name of the premises to which that liquor license applies?

A. The Tenement.

Q. Where is that located?

A. 1046 Second Avenue.

Q. And will you please describe the type of restaurant that is?

A. It's a three-floor operation, with a bar and a cocktail lounge in the first floor, a restaurant on the second floor and dancing and dining on the third floor.

Q. And when did you obtain the premises where the Tenement is located?

A. The latter part of '61.

Q. Do you own that building or do you lease it?

A. I lease it.

[fol. 396] Q. How long is your lease?

A. Twenty-one years.

Q. When you obtained that building, did you invest any money into the physical plant of the building?

A. Yes.

Q. How much?

A. Approximately, forty-five thousand dollars at the time.

Q. When did you first apply for a liquor license for the premises at 1046 Second Avenue?

A. In the latter part of 1961.

Q. And who was your attorney at that time?

A. Elvin Untermeyer.

Q. Was it after you had obtained your lease for the premises?

A. Yes.

Q. Did you have any business associates with you when you applied for your first liquor license?

A. Yes.

Q. And what was his name?

A. Red Pollock.

Q. Maurice Pollock. Now, what happened to that first application, in the latter part of '61?

A. My attorneys at the time told me—

Q. Don't tell us what your attorneys said. What did you do with regard to that application?

A. I withdrew it without prejudice.

Q. Did you submit another application to the State Liquor Authority for a license?

A. Yes, I did.

[fol. 397] Q. Do you recall when that was?

A. In March of 1962.

Q. Were you the sole principal in the business when you submitted the second application?

A. Yes, I was.

Q. Now, who were the attorneys that handled that second application for you?

A. Frank Tashker and Nat Roth.

Q. Do you know a person by the name of Harry Steinman? Just answer yes or no.

A. Yes.

Q. Do you recall when you first met Harry Steinman?

A. I believe it was May of 1962.

Q. And was your application, your second application, then pending when you met Harry Steinman?

A. Yes, it was.

Q. And did you have a conversation with Harry Steinman in May of '62?

A. Yes, I did.

Q. And was anybody with you, when you had that conversation?

A. Yes, there was.

Q. Who was that?

Mr. Brill: I object to it.

The Court: Overruled.

A. Wynn Lassner.

Q. Do you recall where that conversation took place?

A. In Harry Steinman's office.

Q. Do you recall where that office is located?

Mr. Brill: I object to it, if your Honor pleases.
The Court: Overruled.

A. 48th Street.

[fol. 398] Q. East or West?

A. East 48th Street.

Q. Can you be more specific as to the address?

A. I believe it's 15 East 48th Street.

Mr. McKenna: Now may we approach the bench, your Honor?

The Court: You may.

(Whereupon, the following proceedings took place on the record, at the bench, between the Court and counsel for both sides, but out of the hearing of the members of the jury:)

Mr. McKenna: Your Honor, it is the People's contention that in this particular count of the indictment relating to the tenth, that Harry Steinman is a co-conspirator with the defendant, Ralph Berger, and that any conversations held between Harry Steinman and the other co-conspirator, Frank Jacklone, bind the defendant.

I intend to go into those conversations, but at your Honor's instruction, I will first develop the point of conspiracy, and then return to the conversations.

(Whereupon, the following proceedings took place on the record in open court:)

By Mr. McKenna:

Q. After this first conversation with Harry Steinman, did you have a subsequent conversation with Harry Steinman?

The Court: Just yes or no.

A. Yes.

Q. And where did that take place?

A. I believe it was at his office, also.

[fol. 399] Mr. Brill: Can we have the time fixed of this, please?

Q. I was about to say how soon after the first conversation did you have this second conversation?

A. About three or four days later.

Mr. Brill: Can we have the date of the first one?

Mr. McKenna: He said in May of '62.

Q. Can you tell us if it was the beginning, middle or latter part of May, the first one?

A. The latter part of May.

Q. In May of 1962 did you talk to Ralph Berger? Just yes or no. Did you talk to Ralph Berger?

A. Yes.

Q. And was that in person?

A. No.

Q. Was it on the telephone?

A. Yes.

Q. Where were you when you spoke to Ralph Berger on the telephone?

A. In Harry Steinman's office.

Mr. Brill: Excuse me. I object to any further inquiry along this line, unless there's been a proper foundation laid for it.

The Court: And I sustain the objection.

Mr. McKenna: I will lay the foundation, your Honor, but the time and sequence I have to develop.

By Mr. McKenna:

Q. After this telephone conversation in Harry Steinman's office, did you meet Ralph Berger in person?

A. Yes, I did.

Q. And do you recall when it was that you met him?

A. In the latter part of June.

Q. And do you recall—is that 1962?

A. 1962.

[fol. 400] Q. And do you recall where you met him?

A. At a restaurant called Kenny's Steak Pub.

Q. And did you talk with him in Kenny's Steak Pub?

A. Yes, I did.

Q. When you had this telephone conversation with Ralph Berger in May of '62, was that the voice of the man that you met in June of 1962?

A. Yes, it was.

Mr. Brill: I object to it.

The Court: I will allow it. Overruled.

The Witness: Yes, it was.

The Court (to the witness): In other words, it is your testimony that having spoken to him in June, you now recall that the person you spoke to in May over the telephone was this defendant?

The Witness: Yes, your Honor.

By Mr. McKenna:

Q. By the way, the man you met in June of 1962, is he sitting in the courtroom?

A. Yes, he is.

Q. Will you please point to him?

A. The gentleman right there (indicating).

Mr. McKenna: Let the record reflect he is pointing at defense counsel table, at the defendant, Ralph Berger.

Q. Now, will you please tell us what you said to Ralph Berger and he said to you on the telephone in May of 1962?

Mr. Brill: I object to it, if your Honor pleases.

The Court: And I overrule your objection. You have an exception.

A. Mr. Berger told me that he was aware of my situation with my license in New York and that—

[fol. 401] Mr. Brill: I object to this. This is not a conversation.

The Court (to the witness): Is this what he said to you?

The Witness: Yes.

The Court: Is this the substance of what Mr. Berger stated to you over the phone?

The Witness: Yes.

The Court: Overruled.

By Mr. McKenna:

Q. Please continue.

A. And that he would be in to New York shortly and that I shouldn't worry.

Q. Now, in June of 1962, the latter part of that month, you say you had a conversation with Ralph Berger in Kenny's Steak Pub?

A. Yes.

Q. Was anyone else present?

A. Yes.

Q. Who?

A. Harry Steinman and Margaret, my wife.

Mr. Brill: And who?

The Witness: Margaret, my wife—my ex-wife.

Q. . . . Now, can you tell us what you said to Ralph Berger, in June of '62, in Kenny's Steak Pub, and what he said to you?

A. I told him that I couldn't understand why I was having so much problems getting my license, when I felt that I had a legitimate operation and that they were holding me up, and I was becoming very frustrated with the whole thing.

Q. What did Mr. Berger say to you?

A. He stated that he had spoken to Mr. Epstein and that he assured me that I wouldn't have any trouble getting my license, but that it would cost me ten thousand dollars.

[fol. 402] Q. Now, in May of 1962 you said, you testified earlier, you had a conversation with Harry Steinman.

A. Yes.

Q. It was just you, Harry Steinman and Wynn Lassner, right?

A. Right.

Q. You tell us what you said to Harry Steinman and what Harry Steinman said to you, in May of 1962.

Mr. Brill: I object to it.

The Court: I am going to ask both counsel to step to the side, with the reporter.

(Whereupon, the following proceedings took place on the record, at the bench, between the Court and counsel for both sides, but out of the hearing of the members of the jury:)

The Court: Now, in the present posture of the testimony, Mr. McKenna—and you correct me, if I am wrong—all that you have established is a conversation which took place in June in Kenny's Steak Pub, wherein this defendant is alleged to have said, in substance, "I have spoken to Mr. Epstein and it will cost you ten thousand dollars to get the license."

Mr. McKenna: That's right. Harry Steinman is present.

The Court: And Mr. Steinman was then present.

The count in the indictment charges the defendant Berger with the crime of a conspiracy to bribe a public officer.

Mr. McKenna: Right.

The Court: Is it the People's contention, in the posture of the evidence, which pertains to the first count, that sufficient has been adduced to establish prima facie the existence of a conspiracy between this defendant and the witness Frank Jacklone?

[fol. 403] Mr. McKenna: I can develop it further, your Honor.

The Court: I am going to ask you to, because I am going to sustain the objection at this time.

Now, I am also aware of the rule of law that conversations of alleged co-conspirators which took place during the commission of the conspiracy, even in the absence of the establishment, prima facie, of the existence of the prime conspiracy, are admissible subject to connection. I'm aware of that.

Mr. McKenna: Yes.

The Court: But I would prefer to have the conspiracy fully developed, if the People can do it initially.

Mr. McKenna: I can do it. There's more. O.K.

The Court: So at this time I sustain the objection of counsel for the defense.

Mr. Brill: Very good, sir.

(Whereupon, the following proceedings took place on the record, in open court:)

By Mr. McKenna:

Q. Mr. Jacklone, let's go back to the June meeting in Kenny's Steak Pub. If I may just lead up to it. You testified that Mr. Berger said it was going to cost ten thousand dollars to get your liquor license; he had just spoken to Mr. Epstein.

Mr. Brill: I object to that.

The Court: I am going to ask the witness to repeat what Mr. Berger allegedly said in the restaurant, in June of 1962, with respect to the witness getting the liquor license for the club known as the Tenement. Tell us again, what, if anything, he said.

[fol. 404] The Witness: Mr. Berger said that he had just spoken to Mr. Epstein and that he assured me that there would be no problem in getting my license but it would cost me ten thousand dollars.

Q. Was there any conversation as to where this money was going? Just answer yes or no.

A. Yes.

Q. Now, tell us what was said.

Mr. Brill: That is objected to.

The Court: I will allow it. Overruled.

A. The entire sum would be going to Mr. Epstein, except for expenses.

Q. Now, who said this?

A. Mr. Berger.

Mr. McKenna: May I return now to May, 1962, Your Honor?

Mr. Brill: I press the objection, Your Honor.

The Court: Again I am constrained to speak to counsel out of the hearing of the jury with the reporter.

(The following proceedings took place at the bench in the presence of the Court, Mr. Brill, and Mr. McKenna, but without the hearing of the jurors and the alternate jurors.)

The Court: Preliminarily, have you established any agreement on the part of this defendant to participate in the payment of this money? Haven't you only established at this point the fact that this defendant stated that it would cost him \$10,000?

Mr. McKenna: Your Honor, I will develop June 25 fully.

The Court: I am going to ask you to fully develop it before you proceed.

Mr. McKenna: All right.

(At this point the proceedings at the bench were concluded and the following took place within the hearing of the jurors and the alternate jurors.)

[fol. 405] The Court: Now, I believe you stated in your last answer that the defendant said to you that he had spoken to Mr. Epstein and Mr. Epstein indicated that you would have no problems with your license; that it would cost you \$10,000.

The Witness: That is correct.

The Court: And I think you also stated that the defendant said that this sum of money would go to Mr. Epstein except for his expenses; is that correct?

The Witness: Correct.

Q. What did you say to this?

A. I said that I would raise the money; I would have to make arrangements to get the money.

Q. Was there any time set when the money would be paid?

A. Yes.

Mr. Brill: Objected to.

The Court: I will allow it.

The Witness: Yes.

Q. Please give us the conversation.

A. That I would get the money for him on the day that I received my license.

Q. Did Mr. Simon—excuse me—Steinman say anything at this meeting?

Mr. Brill: That is objected to.

The Court: Overruled.

A. No. Mr. Steinman was not involved in the conversation.

Q. Who introduced you to Ralph Berger?

Mr. Brill: That is objected to.

The Court: Overruled.

[fol. 406] A. Mr. Steinman.

Q. Was there any further conversation on June 25 relative to the monies going to Mr. Berger?

A. Not that I recall. No.

Q. Was there any discussion of a man named Nat Roth at that meeting?

A. Yes, there was.

Q. And can you tell us the substance of that conversation and who said what?

A. I had given—

Q. Don't tell us what had been done. Just tell us what was said.

A. Well, it was—it was said they would try to help me to get the money back from Nat Roth; that I had given him \$10,000.

Q. Who said that?

A. Harry Steinman.

Q. And if I may go back, Harry Steinman said he would attempt to help you get the money back from Nat Roth, referring to \$10,000?

A. Correct.

The Court: Now, have you told the Court and the jury the entire conversation that took place in Kenny's Steak House on this June day in 1962?

The Witness: Well—

The Court: Do you recall anything else that was said?

The Witness: Outside of that we were just talking about Nat Roth and getting the money back from Nat Roth, Your Honor.

✓ The Court: Have you given us all that conversation?

The Witness: Yes, yes.

Q. Now, with Your Honor's permission, I would like to direct your attention, Mr. Jacklone, to May of 1962, your first meeting with Harry Steinman.

Mr. Brill: I object to that, if Your Honor please.

The Court: I will allow it. Overruled.

Q. Your first meeting with Harry Steinman, at which this Wynn Lassner was also present, can you tell us what you said to Harry Steinman and what he said to you on that occasion?

[fol. 407] Mr. Brill: I object to that, if Your Honor please.

The Court: Overruled.

A. It is vague.

Q. Give us what you remember.

A. I couldn't say, Mr. McKenna. I can't think of it right now.

Q. Was there any discussion with Harry Steinman relative to a person named Nat Roth?

A. Yes.

Mr. Brill: That is objected to.

The Court: He has already answered "Yes." You may proceed. What was said?

Mr. Brill: I object to that, if Your Honor please.

The Court: Overruled.

The Witness: Talking of trying—telling me about Nat Roth—

Mr. Brill: I can't hear him, Your Honor.

The Court: Keep your voice up, please.

The Witness: Yes, talking about getting the money back from Nat Roth; that I have to get the legal papers; he had my legal papers for my club in his possession; to get the papers back and to get the money back, which I had given him. We made arrangements to meet Nat Roth at his office to get my papers back and to turn them over to another attorney by the name of Harry Neyer.

Mr. Brill: I object to it and move to strike out the answer.

The Court: The objection is overruled and your motion is denied.

Q. Was there any further discussion at this first meeting concerning your application, and I refer to the meeting with Harry Steinman?

A. No.

[fol. 408] Q. Now, the second meeting with Harry Steinman, can you tell us what you said to Harry Steinman and what he said to you?

Mr. Brill: I object to it, if Your Honor please.

The Court: Overruled.

A. Harry—second meeting—Harry Steinman brought me to, to Mr. Neyer, Harry Neyer, an attorney.

Q. Was this before or after or during the second meeting?

A. It's after the second meeting.

Q. Now, in the second meeting, you said earlier, you had a conversation, a phone conversation, with Ralph Berger; is that correct?

A. Correct, yes.

Mr. Brill: I object to it, if Your Honor please.

The Court: Overruled.

Q. Can you tell us what the conversation was between you and Harry Steinman at this second meeting?

Mr. Brill: I object to that, if Your Honor please.

The Court: Overruled.

Mr. Brill: Very good, sir.

A. It's—we were talking about making arrangements with Nat Roth to get the money back, which is, and where we should meet to get the money back; so we made arrangements to meet in his office and Nat Roth to meet at his office to give us the money.

Q. Now, you also mentioned the fact that you discussed an attorney named Harry Neyer, is that correct?

A. Correct.

Q. Had you ever heard the name Harry Neyer before?

Mr. Brill: I object to it.

The Court: Overruled.

[fol. 409] A. No.

Q. Did you meet Harry Neyer?

A. Yes, I did.

Mr. Brill: I object to that.

The Court: Overruled.

Q. Who introduced you to Harry Neyer?

A. Harry Steinman.

Q. And did you enter into a relationship with Harry Neyer? Just answer yes or no.

Mr. Brill: That is objected to.

Q. Answer yes or no.

Mr. Brill: The implications are far too broad to take on meanings which I don't think are comprehensible in this trial.

The Court: Overruled.

You may answer, sir.

A. Yes.

Q. What was that relationship?

Mr. Brill: I object to that.

The Court: Overruled.

A. That Harry Neyer would follow my application which was pending at the State Liquor Authority.

Mr. Brill: Now, that isn't a conversation. This is a characterization; if Your Honor please, and I move to strike it.

The Court: Well, did you retain him?

The Witness: Yes, I did.

The Court: I will allow it. Overruled.

Q. And after your June meeting at Kenny's Steak Club, how soon after that did you get a liquor license, if at all?

[fol. 410] Mr. Brill: Object to it, if Your Honor please.

The Court: Overruled.

You may answer it, sir.

A. Three or four days.

Q. Do you recall the date when you actually received your liquor license?

A. June 28, 1962.

Q. Do you recall who it was that notified you that you had obtained your liquor license?

A. Yes.

Q. Who?

A. Harry Steinman.

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Q. How were you notified?

Mr. Brill: Now, I object to the conversation with Steinman, if Your Honor please, and the manner in which it was had.

The Court: Overruled.

Q. How were you notified that you had obtained your license? Was it in person or what?

A. By phone call.

Q. After you received this phone call from Harry Steinman, what did you do?

A. I went down to the State Liquor Authority.

Q. And was anybody with you?

A. Yes, Harry Neyer.

Q. And what did you do at the State Liquor Authority?

A. I had to sign an affidavit.

Mr. Brill: I object to this, if Your Honor please.

The Court: I will allow it. Overruled.

The Witness: I had to sign an affidavit stating that I would not hire Wynn Lassner in any capacity; and then I received, then I picked up my license; they gave me my license.

Q. What happened after you actually received your license?

Mr. Brill: Objected to.

The Court: Overruled.

[fol. 411] A. I don't understand the question.

Q. All right. I will reframe it. Did you have a conversation after this with Harry Steinman?

Mr. Brill: Objected to, if Your Honor please.

Q. Just answer yes or no.

The Court: You may answer it yes or no.

A. Yes.

Q. Is this the same day that you received your license?

A. Yes.

Q. Please tell us, was that conversation in person or otherwise?

A. By telephone.

Q. Did you speak to anybody else in that phone call?

A. Yes.

Q. Who?

A. Mr. Berger.

Q. Ralph Berger?

A. Yes.

Q. Now, please tell us what Mr. Steinman said—what you said to Mr. Steinman and what he and Mr. Berger said to you in this call.

Mr. Brill: I object to it, if Your Honor please.

The Court: And I overrule your objection. You have an exception.

Q. Just tell us what you said.

A. Oh. I told him that there had been a mixup—

Q. Told who?

A. Harry Steinman.

Q. Okay, go ahead.

A. That there had been a mixup with the monies to be delivered at that time, but that I would deliver the money the next day in the morning.

Q. And what did Mr. Steinman say to you?

A. He said he was—

Mr. Brill: Objected to—

The Court: Overruled.

[fol. 412] The Witness: He said he was annoyed with me and he said, "You could tell it to Ralph," and I spoke to Mr. Berger.

Q. What did Mr. Berger say to you?

A. That he was also annoyed, but that there was nothing he could do about it at the time, but he was—he said, "After you have your license (he said), maybe you think you are set; but you could also lose it the same way you got it."

Q. Now, did you meet with either Harry Steinman or Ralph Berger the day you got your license?

A. No, I did not.

Q. When for the next time did you meet with Harry Steinman and Ralph Berger?

A. The morning of June 29, 1962.

Q. And where did you meet them?

A. At Harry Steinman's office.

Q. Before you actually met with them, did you do anything the morning of June 29?

Mr. Brill: Objected to.

Q. Just answer yes or no.

A. Yes.

The Court: I will allow it.

Q. What did you do?

Mr. Brill: That is objected to.

The Court: Overruled.

You may answer it.

A. I picked up the money from a money lender.

Q. How much money did you pick up?

Mr. Brill: Objected to, if Your Honor please.

The Court: Overruled.

A. Seventy-five hundred dollars.

[fol. 413] Q. Now, after you obtained the \$7,500, what did you do?

A. I took the money to Harry Steinman's office.

Q. Who was in Harry Steinman's office?

A. Mr. Berger and Mr. Steinman.

Q. Is that the same office you mentioned previously?

A. Yes.

Q. That is Ralph Berger, is it not?

A. Yes.

Q. Now, tell us what you did and what was said when you went to Harry Steinman's office with the money.

Mr. Brill: I object to it, if Your Honor please.

The Court: And I overrule your objection.

A. I apologized for being late and not having the money the night before. I then handed a bag of money over to Mr. Berger and he counted it—

Q. And who counted it?

A. —in front of me. Yes.

Q. Who counted it?

A. Mr. Berger counted it.

Q. Did Mr. Steinman say anything?

A. Mr. Steinman told him to count it.

Q. And was it counted in your presence?

A. Yes.

Q. And did Mr. Berger say anything?

A. No, he just counted it.

Q. At what point in your meeting with Ralph Berger and Harry Steinman does the counting of the money occur?

A. Around 10 minutes after I get there.

Q. Do you recall the denominations of the money?

Mr. Brill: Objected to.

The Court: Overruled.

A. No, I don't clearly recall it, no.

Q. Had you actually counted the money before you got there?

A. No, I did not.

[fol. 414] Mr. Brill: Objected to.

The Court: Overruled.

Q. Now, after the money was counted, did you have any further conversation with Harry Steinman and Ralph Berger?

A. We were just talking, yes.

Q. Can you give us the conversation, please? Be specific as to who says what.

Mr. Brill: Objected to.

The Court: Overruled.

A. Mr. Steinman asked me if there was anything he could do for me; if I was all set to go, to open the club; and I just talking about getting a few odds and ends straightened out and that I would be all right.

Q. Did the name Harry Neyer come up in the conversation?

Mr. Brill: That is objected to, if Your Honor please.

The Court: I will allow it.

A. Yes.

Q. Please give us the conversation relative to him.

Mr. Brill: Objected to.

The Court: I will allow it.

A. I had to make a check out—

Mr. Brill: No. I object to that.

Q. Just tell us what was said.

The Court: Sustained.

Tell us what was said.

A. He told me to make a check out for \$250 payable to Harry Neyer and that he would—that Harry Neyer wanted two thousand dollars for his fee, but he got him down to \$750.

[fol. 415] Q. When you say "he," who are you referring to?

A. Harry Steinman; and that I should make a check out for two hundred and fifty and he would lay out \$500 in cash for me and I would give it to him the following Monday.

Q. And all during this conversation was the defendant present?

A. Yes.

Q. Was there any further conversation at this meeting?

A. Not that I can clearly recall, no.

Q. Besides having a conversation with them, did you do anything else at this meeting?

A. Yes.

Q. What did you do?

A. I made a phone call to my club.

Q. Yes.

A. To find out if they needed anything.

Mr. Brill: I object to that.

The Court: I will allow it.

Q. Was this in the presence of the defendant and Mr. Steinman?

A. Yes.

Mr. Brill: Just a moment, please. I object to the question, if your Honor please, and move to strike the answer. It could not possibly be in furtherance of anything, if there ever was anything, which is charged in this indictment, in Count 1—it had already been terminated.

The Court: Do you want to be heard on that?

Mr. McKenna: No, I think it is obvious, your Honor, but he can testify to what he said in their presence.

The Court: Well, counsel contends that if, in fact, a conspiracy was ever entered into, it was terminated by the payment of the money.

[fol. 416] Mr. McKenna: The whole thing surrounding the payment of that money is relevant. It does not stop the minute he turns—

Q. Did Mr. Berger do anything at that meeting?

The Court: There is an objection in the record now.

Mr. McKenna: I am sorry.

The Court: I merely am going to allow that portion of his testimony where he says he called the club, I will not permit any conversation.

.

Q. Was this the only time that you delivered money to either Harry Steinman or Ralph Berger?

Mr. Brill: That is objected to.

The Court: I will allow it. You may answer it.

The Witness: No.

Q. Had you delivered money previous or subsequent to this June 29th meeting?

Mr. Brill: Now, I object to this, if your Honor pleases. It is doing by indirection what he can do directly.

.

The Court: You may answer it. Say yes or no.

The Witness: Yes.

Q. Was it previous to this occasion?

A. Yes.

Q. Who did you deliver money to?

A. To Harry Steinman.

Mr. Brill: I object to it.

The Court: I will allow it. Overruled.

Q. How much money did you deliver?

[fol. 417] Mr. Brill: Objection.

The Court: Overruled.

The Witness: A total of twenty-five hundred dollars.

Q. On how many occasions, if you recall?

Mr. Brill: I object to that.

The Court: Overruled.

The Witness: On two occasions.

Q. Was anybody else present when you delivered the money to Harry Steinman?

A. Yes.

Q. Who?

A. Nat Roth.

Mr. Brill: I object to that and move to strike it out.

The Court: I will allow it.

Q. How long prior to June 29th do you say that you brought twenty-five hundred dollars to Mr. Steinman, approximately?

A. Two weeks.

By Mr. McKenna:

Q. Mr. Jacklone, you had a conversation with Mr. Berger in Kenny's Steak Pub; do you remember, or do you know who Commissioner Epstein was?

A. Yes.

Q. Who was he, to your knowledge?

A. Chairman of the State Liquor Authority.

Mr. McKenna: Then I have completed my examination of this witness, your Honor.

(Whereupon, the jurors left the courtroom and the following proceedings were had in their absence:)

[fol. 418] Mr. McKenna: May the record reflect that I am turning over to Mr. Brill the Grand Jury minutes of Jacklone, given December 14th, 1962, pages 1 through 49, and testimony given April 1st, 1963, pages 3014 through 4022?

(The minutes referred to were marked Court's Exhibit 11 for identification.)

Mr. McKenna: As Court's Exhibit 12 for identification, I have the notes taken on December the 10th, 1962, of Frank

Jacklone, by Detectives Poulson, Bogen and Reilly, consisting of four sheets.

(The notes of the detectives referred to were marked Court's Exhibit 12 for identification.)

Mr. McKenna: Now, as Court's Exhibit 13 for identification, the notes of Frank Jacklone's interview with Assistant District Attorney's Scotti and Goldstein, also present Captain Vitrano and Detective Poulos, consisting of two pages, dated 12-18-62.

(The notes of the Assistant District Attorneys referred to were marked Court's Exhibit 13 for identification.)

Mr. McKenna: I offer as Court's Exhibit 14 for identification the notes of Assistant District Attorney Goldstein of an interview with Frank Jacklone on December 13th, 1962, at which was present Chief Assistant District Attorney Scotti, consisting of nine pages.

(The notes of A.D.A. Goldstein were marked Court's Exhibit 14 for identification.)

Mr. McKenna: Finally, I offer the interview of Frank Jacklone on September 9th, 1964.

Mr. Brill: What interview?

Mr. McKenna: By Assistant District Attorney McKenna, consisting of two pages.

[fol. 424] Trial continued.

New York 13, N. Y.,
October 21, 1964.

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, and Mr. Brill.)

[fol. 425] Mr. Brill: Your Honor, at the dry runs had by the Court, with the defendant and counsel present, which were taken by the court reporters, and in the absence of

the jury and the public, matter appears in the purported transcripts with respect to those tapes which we have now, for the purposes of the dry run, identified as Nos. 3 and 4.

The Court: And this was because of their chronological order.

Mr. Brill: Yes. And they were so identified solely and only because they were played that way back to the Court, in that chronological order.

I think, without need for a detailed motion with respect to that, I now respectfully move to exclude on the grounds of inaudibility, incompetency, and irrelevancy, those tapes so identified.

The Court: You want to be heard on it?

Mr. McKenna: The People have submitted them. We feel they are relevant and we feel that those tapes are audible, Your Honor.

The Court: I recognize the fact that the detective who overheard these conversations could testify that, to what he heard, but the matter contained therein is not particularly relevant on the issue in this case and, on all of the facts, I am going to grant the application of defense counsel and direct that they be excluded as exhibits, although they have not as yet been offered. My determination is predicated upon the so-called dry run held in the absence of the jury. I direct the District Attorney to abide by the Court's order not to offer these two recordings, designated as Nos. 3 and 4 in terms of chronology.

[fol. 426] This determination, however, does not preclude counsel from making any other motion with respect to two recordings designated Nos. 1 and 2.

Mr. Brill: Very good, sir.

May we, so that the record is clear, have those two tapes identified marked for identification?

The Court: They have already been identified.

Mr. Brill: Have they been marked for identification?

The Court: Yes.

Mr. Brill: Oh. I lost that.

The Court: What did I say? We have identified them by numbers.

Mr. McKenna: Yes. 5483, I think; actually, that is the only one left—5483.

[fol. 452] Redirect examination.

By Mr. McKenna:

Q. Do you recall Mr. Brill questioning you this morning about your testimony on your first appearance in the Grand Jury relative to the conversation you had with Mr. Berger when you turned the money over to him?

A. Yes.

Q. And do you recall him reading certain questions and answers out of your Grand Jury testimony?

A. Right.

Q. And do you recall—just to orient you—him reading to you this question and you making this answer:

“Question: Now, tell us what happened when you went to Steinman’s Office?

“Answer: I walked into his office—”

Mr. Brill: What page?

Mr. McKenna: I am sorry, the bottom of 38, going into 39.

Mr. Brill: Yes.

Q. “I walked into his office, Mr. Steinman was on the phone.

“Question: On whose telephone?

“Answer: Mr. Berger was to my left. I walked in and I handed the envelope, the brown envelope, to Mr. Berger. I said: ‘Do you want to count it?’ He said: ‘No, I trust you.’ I said: ‘Thank you.’ And I left.”

Do you recall being read those questions and answers?

A. Yes.

Q. Was that testimony that you gave in the Grand Jury on December 14th true?

A. No, it was not.

[fol. 453] Q. Did you subsequently correct that testimony?

Mr. Brill: Oh, that is objected to, if your Honor please.

The Court: Sustained, because of the form of the question.

Did you subsequently give testimony with respect to the same situation?

The Witness: Yes, I did.

Q. As to the occurrences in Mr. Steinman's office on the morning of June 29th, 1962?

A. Yes, sir.

The Court: In relation to this same subject, five hundred dollars?

The Witness: Yes, sir.

The Court: What day was that, if you know?

The Witness: No, I don't recall.

• • • • •

(The stenographer then read the pending question, as follows:

"Question: Do you recall what it is you said in the Grand Jury on a subsequent occasion relative to this June 29th meeting?")

The Witness: Yes.

By Mr. McKenna:

Q. Tell us what you recall.

A. I believe I said; it is very vague right now.

Q. May I refresh your recollection, Mr. Jacklone?

A. Yes.

Q. At the middle of page 55, do you recall these questions and answers:

"Question: Do you recall where you received this money?

"Answer: Mr. Steinman's Office.

[fol. 454] "Question: And what did you do with the twenty-five hundred dollars?

"Answer: Mr. Roth gave me twenty-five hundred dollars and, in turn, I turned it over to Mr. Steinman to hold:

"Question: That was in cash?

"Answer: In cash.

"Question: Now, the last time you testified before this Grand Jury you said that you kept it for a while and then turned it over to Mr. Berger; do you remember that?

"Answer: Yes.

"Question: Was that wrong?

"Answer: Yes, sir.

"Question: Let me ask you this, in plain English, were you giving us, were you telling us, that in order to minimize Mr. Steinman's part in all this, man to man; I want you to be honest with us?

"Answer: Yes, I was doing it for—to minimize Mr. Steinman's part in it.

"Question: You were trying to help him?

"Answer: Yes, sir.

"Question: Is it a fact that Mr. Steinman got in touch with you a number of times recently?

"Answer: Oh, yes.

"Question: Is it a fact that you—is it a fact that he told you that, he pleaded with you not to bring him in this whole matter, or not to reflect on his office?

"Answer: He didn't, yes, not to bring if I didn't have to bring the office into the situation, because the office, itself, was innocent and we just met there, but he did tell me that I had to protect myself and I should do whatever is necessary."

Mr. Brill: Now, if your Honor please, I move to strike it.

The Court: Your motion is denied.

[fol. 455] Q. Is it true as you testify now that Mr. Berger counted the money in your presence on June the 29th?

The Witness: Yes, sir.

Q. Is it true, as you testify now, that you turned over to Harry Steinman to hold the twenty-five hundred dollars you received back from Nat Roth?

Mr. Brill: I object to that, your Honor.

The Court: I will allow it, sir.

The Witness: Yes, sir, that's right.

Q. Is it true that, is it true now, as you testify, that Harry Steinman was the man who notified you that your liquor license had been approved?

Mr. Brill: I object to that, your Honor.

The Court: I will allow it; objection overruled.

The Witness: Yes, sir, that is right.

Q. Is it true, as you testify now?

Mr. Brill: I object to that, your Honor.

Q. That it was in the June 29th meeting with Harry Steinman and Ralph Berger that Harry Steinman told you he was laying out five hundred for Harry Neyer?

Mr. Brill: That is objected to, if your Honor please.

The Court: The objection is overruled.

The Witness: Yes, sir.

• • • • •

Q. How did you come to meet Harry Steinman for the first time.

Mr. Brill: That is objected to.

The Court: I will allow it, overruled.

[fol. 456] The Witness: My friend Wynn Lassner introduced me to him.

• • • • •

The Court: I will allow it. Who arranged the meeting?

Mr. McKenna: Yes?

The Witness: Wynn Lassner.

Q. At whose request?

Mr. Brill: That is objected to.

The Court: I will allow it.

The Witness: At my request.

Q. And you paid or gave over to Ralph Berger on June 29th, 1962, seventy-five hundred dollars—when you paid or gave over to Ralph Berger on June 29th, 1962, the seventy-five hundred dollars, did you know where that money was going?

Mr. Brill: That is objected to. This is not matter that was touched on in cross examination.

The Court: I will allow it.

Mr. Brill: Not proper re-direct, your Honor.

The Court: Did you know of your own knowledge where that money was going?

The Witness: I did not know for sure, no, I suspected where it was going.

Mr. Brill: I move to strike out what he suspects.

The Court: I will allow this as a complete answer. You had no personal knowledge of where it was going?

A. No, sir.

Q. Did anybody tell you where it was going?

[fol. 457] Mr. Brill: That is objected to.

The Court: I will allow it, overruled.

The Witness: Yes.

Q. Who?

A. Martin Epstein.

Q. Who told you it was going to Martin Epstein?

A. Mr. Berger.

Mr. Brill: Now, if your Honor please, I renew the objection to this line of inquiry as being improper, inflammatory and prejudicial and I move to strike the answer.

The Court: Your motion is denied.

By Mr. McKenna:

Q. On June 29th, when you turned that money over to Ralph Berger, is it your testimony you knew you were, in effect, paying money to a public official?

Mr. Brill: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Brill: All right, I have made my objection to your Honor.

The Court: And I have overruled it. You may answer.

The Witness: Yes, and no.

The Court: Do you want to give a full answer to it?

Mr. Brill: He said so, yes and no.

The Court: Is that your full answer?

The Witness: Yes, sir.

Q. When you say "Yes" what do you mean?

Mr. Brill: No, I object to that, now.

The Court: Overruled.

[fol. 458] The Witness: Yes that I thought that the money would have to go to Mr. Epstein in order to acquire a license and I could not, and I would not be guaranteeing that the money would go to him, I did not know where the money went after I handed it over.

Mr. Brill: I move to strike it out.

The Court: Overruled, denied.

Q. You wanted to pay this money, didn't you?

Mr. Brill: That is objected to.

The Court: I will allow it, overruled.

The Witness: No, I did not want to pay the money.

Q. Did anybody twist your arm to pay it?

Mr. Brill: That is objected to.

The Court: I will allow it, overruled.

The Witness: Nobody physically twisted my arm, no.

Q. When you gave this money over to Ralph Berger on June 29th did you know that what you were doing was wrong?

Mr. Brill: That is objected to.

The Court: I will allow it, overruled.

The Witness: Yes.

[fol. 463] DETECTIVE ANTHONY J. BERNHARD, Shield No. 2626, attached to the District Attorney's Office Squad, New York County, Police Department of the City of New York, called as a witness in behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct examination.

By Mr. McKenna:

Q. What is your present assignment at the District Attorney's office?

A. I have several. The State Liquor Authority investigation being one of them.

Q. And in June, to be specific, on June 25th, of 1962, did you receive an assignment from your superior officer? Just answer yes or no.

A. Yes.

Mr. Brill: If your Honor pleases, I object to this entire line of testimony, which seeks to adduce evidence illegally obtained by trespassing.

(Whereupon, the following proceedings took place on the record, at the bench, between the Court and counsel for both sides, but out of the hearing of the members of the jury:

(Whereupon, the next to the last statement made by Mr. Brill in open court was read to Mr. Brill, at his request, by the Court Reporter.)

Mr. Brill: (Continuing statement) —and all of the leads as a result of which evidence was obtained were all obtained through the eavesdrops which, it is urged, consti-

tuted a trespassory invasion of constitutionally protected areas, in violation of the rights of the defendant, pursuant to the Fourth Amendment of the Constitution of the United States.

[fol. 464] I conceive it to be my obligation not merely to rest upon your Honor's ruling in respect of the motion to suppress, but also to make it clear to the Court that I object to all the evidence sought to be adduced as a result of that activity, and it seems to me that such a motion should be made at the outset of each witness who will give evidence concerning the matters which he did and which were followed out as a result of information obtained through the eavesdrops.

The Court: And as I understand it, you're making a blanket objection to any testimony sought to be elicited by the district attorney from this witness on the ground that such testimony was at least the by-product of an illegal invasion of the defendant's constitutional rights.

• • • • •
The Court: Was the result of a lead.

• • • • •
The Court: That's all I intended by the use of the word "by-product."

• • • • •
The Court: The objection is overruled.
You have an exception.

Mr. Brill: Your Honor, just so we have it clear, is it necessary for me to make further objections on that ground with respect to the—

The Court: Let the record show that counsel's present objection is intended to cover the entire inquiry presently being made of this witness with respect to any facts in this case, on the grounds set forth by counsel in the record.

[fol. 465] Q. As a result of that assignment, what did you do?

A. I proceeded to New York Hospital on East 68th Street, with Detective Campbell, also of the District Attorney's Office Squad. We were to ascertain the room number in which Commissioner Martin Epstein—

Q. Did you go to New York Hospital?

A. Yes, I did.

Q. What floor did you go to?

A. We proceeded to the sixteenth floor.

Q. Did you observe anything on the sixteenth floor?

A. Yes, sir, I did.

Q. Tell us what you observed.

A. Six-thirty P. M. In Mr. Epstein's room, which is Room 1619, there were five visitors, three male and two female. Mr. Epstein himself was confined to bed. The two females were Roslyn Epstein, his wife, and his sister, Mary—

Q. Did there come a time when you observed Mr. Berger?

A. Yes, sir, I did.

[fol. 466] Q. Now approximately what time did you observe Mr. Berger?

A. At approximately 8:10 P. M. he was escorted to Mr. Epstein's room by a nurse.

Q. Tell us what you further observed.

A. He entered the room and was greeted by Mrs. Epstein, who said, "Hello, Ralph. How are you?" He nodded to her, and she took him to Mr. Epstein's bedside, where Mr. Epstein and Mr. Berger engaged in conversation for approximately twenty minutes.

Q. Did you observe Mr. Berger leave?

A. Yes, sir, we did.

Q. About what time was that?

A. He left the hospital at approximately 9:00 P. M.

Q. And did you do anything when he left?

A. Yes, we did.

Q. What did you do?

A. We placed him under observation until 1:30 in the morning.

Q. Tell us what he did in that period of time.

The Court: Overruled.

A. At approximately 9:00 P. M. Mr. Berger left the hospital and proceeded by car to Kenny's Steak Pub, located at Lexington Avenue, and I believe it's East 53rd Street. He was carrying a suitcase with him. He entered the premises, checked his suitcase, and made several phone calls from approximately 9:20 to about 9:55, at which time he came out of the telephone booth and was met there by one Harry Steinman. The two men sat down at the table and ordered some food. I was then joined by Detective Alessi, of the District Attorney's Squad. We got a table, the very next table to Mr. Steinman and Mr. Berger.

At approximately 9:55, Frank Jacklone entered the premises with a young female and was escorted to Mr. Steinman's and Mr. Berger's table.

[fol. 467] Mr. Jacklone introduced the young lady at the table, and they all sat down together.

Jacklone sat down and said, "It's all right to talk in front of her. We're like brother and sister."

Q. Please continue.

A. Mr. Jacklone then said to Mr. Berger and Steinman, "I don't know why they are throwing rocks at me down there. Everything is all right."

Mr. Berger said, "Don't worry. Everything will be all right. I just spoke to him."

Q. Were you able to overhear any further conversation?

A. They chatted about Mr. Jacklone's trip to Miami, about the opening of the club. That's about all.

Q. Now did there come a time when this meeting broke up?

A. Yes. At approximately 1:15 Mr. Jacklone left with the young lady; wherein, Mr. Berger and Steinman left and proceeded to the Middletown Hotel, which was the residence of Mr. Steinman. At about 1:30 A. M. in the morning the observation was discontinued.

* * * * *

[fol. 472]- FRANK JACKLONE, having been previously duly sworn, was recalled in behalf of the People and testified further as follows:

Direct examination.

By Mr. McKenna:

Q. Mr. Jacklone, do you recall on Monday being in the witness room with Mr. Lownes?

A. Yes.

Q. Did you have a conversation with him at that time?

* * * * *

A. Yes.

Mr. Brill: I object to this, if your Honor pleases.

* * * * *

Q. As a result of that conversation with Mr. Lownes, on Monday of this week, was your memory refreshed with regard to a conversation you had with Mr. Berger on June the 25th, 1962?

A. Somewhat, yes.

Q. Do you recall something additional that Mr. Berger said on June the 25th, 1962?

A. Yes.

Q. Will you tell us what it is.

Mr. Brill: I object to it. This is not the offer that Mr. McKenna made at the side bar.

[fol. 473] The Court: I'll strike out counsel's statement.

Q. Just what Mr. Berger said that you now remember.

A. I recall vaguely that Mr. Berger mentioned that he was also handling Playboy and it was costing them a lot more than I was paying.

[fol. 476] DETECTIVE WALTER FINLEY, Shield 374, District Attorney's Office Squad, Police Department, City of New York, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

Direct examination.

By Mr. McKenna:

Q. Detective Finley, what is your occupation?

A. I am a detective in the New York City Police Department.

Q. Detective Finley, I direct your attention to June the 27th, 1962; did you receive an assignment from your superior officer on that day?

A. Yes, sir, I did.

The Court: What did you do?

The Witness: On the 27th I was assigned to make observations outside of New York Hospital.

[fol. 477] Q. And did you go to the vicinity of New York Hospital?

A. Yes, sir, I did.

Q. About what time did you go to the vicinity of New York Hospital?

A. Oh, yes, it was approximately eight A. M. in the morning.

(Whereupon, the following proceedings were had at the bench, out of hearing of the jurors and the witness):

Mr. Brill: I take it this witness will testify pursuant to the matters already developed as to evidence and leads to evidence obtained by the use of eavesdropping equipment, and in light of the concession made by the District Attorney on the motion to suppress that all of the evidence and all of the leads to evidence in this case is based upon that which was obtained through the use of eavesdropping equipment in the premises described as being the offices of Harry Neyer, an attorney, and the alleged co-conspirator, Harry Steinman.

My objection to the line of inquiry which he seeks to adduce as evidence from this witness is that the evidence was illegally obtained by the trespassory invasion of constitutionally protected areas and that that goes not only to the evidence itself, but also to the leads to the evidence.

Mr. McKenna: As to this witness and the last witness, these are not witnesses whose evidence stems from eavesdropping. They were assigned to surveillance in New York Hospital and that hospital was being surveilled for a period of time before there was any bug in Harry Steinman's office.

Mr. Brill: Excuse me, the statement which was unequivocal—I want to get the record to establish it, Judge.

[fol. 478] Mr. McKenna: That is not necessary, I know what I said.

Mr. Brill: At the time when Mr. McKenna made the concession it was that all the evidence in this case and the leads to the other evidence which was obtained, that the entire case is based upon the eavesdropping.

The Court: All right, your motion to preclude the evidence which the District Attorney presently seeks to elicit from this witness is denied.

Mr. Brill: And the objection to the whole line goes without the need for making an objection to each question—it will be deemed to go throughout his testimony?

The Court: Yes.

Mr. Brill: I take it your Honor overruled the objection?

The Court: That is correct.

(Proceedings were then resumed in open court, as follows):

By Mr. McKenna:

Q. Detective Finley, on June 27th, 1962, while you were in the vicinity of New York Hospital, did you see the defendant, Ralph Berger?

A. Yes, sir, I did.

.

Q. Now, approximately when for the first time did you see Ralph Berger?

A. Approximately six P. M.

Q. And where did you see him?

A. He was walking toward me in the lobby of New York Hospital.

Q. What did you observe?

A. I observed the defendant in a phone booth in the west portion of the lobby.

Q. What did you do?

A. I entered the phone booth adjacent to him.

Q. And will you tell us what occurred?

A. Yes, sir, he made two phone calls.

[fol. 479] Q. Did you overhear the call, did you overhear the defendant speaking during the phone calls?

A. Yes, sir.

Q. Will you please tell us what you heard?

A. Can I refresh my memory from my notes?

Q. Yes.

.

(A yellow sheet of paper with writing was marked People's Exhibit 45 for identification.)

By Mr. McKenna:

Q. Tell us what you remember without your notes?

A. Well, the first conversation I only caught a very short part of it, during which time he mentioned something about "what do you mean it is being in the contract? Better get ahold of those two guys."

Q. Was that the sum total of your recollection with regard to the first conversation?

A. Yes, sir.

Q. And do you recall now what the defendant said in the second conversation?

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The Witness: He said: "Look, Ed," or "Red," it was inaudible which of the two he had said. "I am up here at the hospital now, but this guy—" No, he said: "I am up here but this guy in the hospital can't do anything for me now. This is Steinman's fault, he should have taken care of it. I should be at the hotel later on."

Q. Now, will you—

A. Also, he said: "Harry called down there at a quarter to five and the approval was already in."

.

Q. All right now, will you look at People's Exhibit 45 for identification?

A. Yes.

Q. Is your memory refreshed as to anything else that was said by the defendant in either of these phone conversations?

A. Yes, I had a portion of it confused with the first conversation. The first conversation, here it said: "You

better get in touch with Harry", and on the second conversation he just refers to: "He called down there at a quarter to five and the approval was in. I am tired of all this running around"—portion inaudible—at which time he said: "I will be back at the hotel later."

Q. Did you see the defendant, Ralph Berger on June 29th, 1962 in the vicinity of New York Hospital?

A. Yes, sir, I did.

Q. Approximately what time did you see him?

A. I first observed the defendant approximately 3:55 p. m.

Q. And where did you observe him?

A. He was standing at the main entrance to New York Hospital.

Q. Just tell us what he did?

A. He was standing there in front of the main entrance to the New York Hospital, at which time I began taking motion pictures of him.

Q. And did he enter the hospital, or leave the hospital?

A. He was leaving the hospital.

Q. Leaving?

A. He was leaving the hospital at this time.

Q. And what did you observe him do as he left the hospital?

A. He attempted to get into a cab, which he did not succeed in doing, at which time he walked towards me, and then turned towards York Avenue, and 68th Street, at which time he crossed York Avenue going west, the opposite side of the street, and there hailed a cab.

Q. And were you taking pictures of the defendant during this period of time?

A. Yes, sir, I was.

[fol. 483] JAMES A. POULOS, Police Detective, Shield No. 2136, assigned to the District Attorney's Office Squad, New York County, a member of the Police Department of the City of New York, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination.

By Mr. McKenna:

Q. Stop there. Detective Poulos, is it not true that regarding the investigation of the New York State Liquor Authority you were more or less the supervising detective?

A. Yes, sir.

Mr. Brill: If Your Honor please, I think this is the appropriate time to record the record objection with respect to this witness.

The Court: Is it similar to the objection made to the testimony elicited from the prior witness?

Mr. Brill: Yes, Your Honor.

The Court: It will be deemed recorded with the same force and effect as if you set it forth in full.

Mr. Brill: Very good.

The Court: And the Court adheres to the same determination and you have an exception.

Mr. Brill: And that obviates the necessity for my making an objection seriatim to all the questions.

The Court: That is correct.

Q. Now, Detective Poulos, I direct your attention to June 27, 1962. Did you receive an assignment from your commanding officer?

A. I did.

[fol. 484] Q. What did you do?

A. I went to the New York Hospital.

Q. I mean the time of day.

A. In the afternoon, sir.

Q. And on June 27, 1962, did you see the defendant, Ralph Berger, at that location?

A. I did, sir.

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Q. Now, at five o'clock, where was the defendant when you observed him on June 27, 1962?

A. He was on the 16th floor of the New York Hospital.

Q. And did you observe him do anything?

A. Yes, sir. He was in a public booth which is located in a small hall off the elevators and to the right, up against the wall.

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Q. And did he leave that telephone booth?

A. He did, sir.

Q. And what did he do after he left the telephone booth?

A. He walked a short distance in a short hall, made a right turn, and went into Mr. Epstein's room, which is Room 1619:

Q. And approximately how long did he remain in that room?

A. Approximately five minutes.

Q. Did you observe, then, Mr. Berger exit from the room, 1619?

A. I saw Mr. Berger exit with Mrs. Epstein at that time and they walked, proceeded to walk down the corridor.

Q. And where did he go, if you know?

A. I don't know where they went.

.

Q. Now, did you observe the defendant after that?

A. I did, sir.

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[fol. 485] Q. I see. After you had your conversation with Officer Finley, what did you do?

A. I, about 6:10 p. m., I observed Mr. Ralph Berger in the main lobby, heading towards the telephone booths.

Q. Did you observe him enter the telephone booth?

A. Yes, sir.

Q. Did you observe Detective Finley enter the booth next to him?

A. I did, sir.

Q. Now, after that, what happened?

A. I then left the main lobby and went outside at the mall.

Q. Now, I direct your attention to June 29, 1962. Did you receive an assignment on that day from your commanding officer?

A. Yes, sir.

Q. What did you do?

A. I went up to the New York Hospital.

Q. Approximately what time did you go to the New York Hospital?

A. Early in the day, sir.

Q. Now, on June 29, 1962, did you observe the defendant, Ralph Berger?

A. I did, sir.

Q. Approximately what time?

A. Two-thirty p. m.

Q. And where did you observe him?

A. I observed him coming off the elevator on the 16th floor and I observed him entering Room 1619, which is Mr. Epstein's room.

Q. And what did you observe after that?

A. I observed a nurse coming out at 3:16 and at 3:17 I observed Mr. Ralph Berger step out of the room, look down the corridor, look behind him, and step back into the room. And at 3:34 I observed Mrs. Epstein going into Mr. Epstein's room.

Q. Did you observe the defendant leave that room?

A. I did, sir.

Q. Approximately what time was that?

A. Approximately 3:37 he came out of the room, went [fol. 486] into the small corridor to the elevators and pressed the "Down" button.

Q. And what were you doing at that time?

A. At that time I was stationed at the doorway of the elevator and, after waiting a short period, I got into a conversation with Mr. Ralph Berger.

Q. And did you go down in the elevator with Mr. Berger?

A. I did, sir.

Q. Were you talking to him while you were going down in the elevator?

A. No, I was talking to him while we were on the floor.

.

Q. Did you observe Mr. Berger leave the premises at New York Hospital?

A. I observed him taking the, leaving from the private entrance of the New York Hospital; he took the sidewalk that went around the building, which led to the main entrance of the hospital, and entered the main lobby of the hospital.

Q. And did you observe him after you saw him enter the main lobby of the hospital?

A. After? No, sir.

Q. Now, on June 29, did there come an occasion when you had a conversation with Detective Finley?

A. On June 29?

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Q. And did you have a camera with you on that occasion?

A. I did, sir.

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Q. Will you please describe the camera.

A. It is a Bell & Howell 8 millimeter movie camera.

Q. . . . Did you turn this camera over to anybody?

A. I did, sir.

Q. To whom?

A. To Officer Finley.

[fol. 487] Q. And you have that film with you today?

A. Yes, sir.

(The Grand Jury testimony of the witness Poulos was marked Court's Exhibit 22 for identification.)

(Report of Detective Poulos, above referred to, was marked Court's Exhibit 23 for identification.)

(The spool of film referred to was marked People's Exhibit 46 for identification.)

(The box for the film was marked People's Exhibit 46-A for identification.)

[fol. 490] GEORGE KELLY, residing at 111 West Washington Street, Chicago, Illinois, called as a witness in behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct examination.

By Mr. McKenna:

Q. Mr. Kelly, what is your occupation?

A. I'm an attorney-at-law.

Q. And do you hold a position with any institution?

A. Yes. I am attorney and counsel for the Michigan Avenue National Bank of Chicago.

Mr. Brill: If your Honor pleases, before we go any further with this witness, may the record show that my

full objection, on the grounds previously stated at the side bar, goes to the entire line of evidence sought to be adduced from this witness.

The Court: Granted.

Mr. Brill: And, your Honor, I take it, makes the same ruling?

The Court: I adhere to my same ruling.

All objections are overruled, and you have an exception.

Mr. Brill: And I need not take them seriatim. It goes to the whole line?

The Court: To the entire inquiry—unless you deem it advisable, in the interest of your client, to make a particular objection to a particular question.

Q. Now, Mr. Kelly, in response to a subpoena from the District Attorney's office, did you bring with you records [fol. 491] of the account of Lee Berco Co., Inc.?

A. I did.

Mr. McKenna: Grand jury testimony of George Kelly, pages 3176 to 3198.

(Whereupon, the Grand Jury testimony, above referred to, was marked Court's Exhibit 24 for identification.)

Mr. McKenna: And may the record reflect that the testimony was given on April the 3rd, 1963.

Mr. McKenna: * * * I intend to call another witness from the Chase Manhattan Bank of New York, your Honor, and I shall now give the testimony to Mr. Brill.

This testimony was given on April the 10th, 1963.

(Whereupon, the Grand Jury minutes above referred to, were marked Court's Exhibit 25 for identification.)

Q. Now, do you have with you the corporate resolution of a firm known as Lee Berco Co., Inc.?

A. I do.

(The document referred to was admitted in evidence and deemed marked People's Exhibit 47.)

(The photostatic copy of People's Exhibit 47 was admitted in evidence and marked People's Exhibit 47-A.)

[fol. 492] Mr. McKenna: I now, Your Honor, offer the signature cards of the Lee Berco Company, Inc., in evidence as People's Exhibit 48, and once again have them deemed marked, with Mr. Brill's permission, and may I substitute a photostat of a signature card.

(The three signature cards referred to were admitted in evidence and deemed marked People's Exhibits 48, 48-A, and 48-B, respectively.)

(The photostatic copy of one of the signature cards was admitted in evidence and marked People's Exhibit 48-C.)

(The signature card referred to was admitted in evidence and deemed marked People's Exhibit 48.)

(The photostatic copy of People's Exhibit 48 was admitted in evidence and deemed marked People's Exhibit 48-A.)

Q. Mr. Kelly, does the signature card reflect the date that the account was opened?

A. It did.

Q. What date was that?

A. June 9, 1961.

(The four transcript of account cards were admitted in evidence and deemed marked People's Exhibit 49.)

(The eight photostats of People's Exhibit 49 were admitted in evidence and marked People's Exhibit 49-A.)

[fol. 493] Q. Now, does the check that is People's Exhibit 12 contain on it the endorsement stamp—

Q. —of the Michigan Avenue National Bank?

A. Yes, it does.

Q. Mr. Kelly, did you bring with you a deposit ticket of the Michigan Avenue National Bank, dated June 29, 1961, pertaining to the account of Lee Berco Co., Inc.?

A. Yes, I did.

(The deposit slip referred to was admitted in evidence and deemed marked People's Exhibit 50.)

(The photostatic copy of People's Exhibit 50 was admitted in evidence and marked People's Exhibit 50-A.)

Q. Mr. Kelly, we have in the upper right-hand corner of Exhibit 50, the date, June 29th, 1961, then on the left side of that same exhibit we have the date, June 30th. Now, is that a stamp of the bank on the left side of People's Exhibit 50?

A. Yes, it is.

Q. And what is that stamp, and what does that stamp reflect?

A. It reflects the date that this deposit went through the books of the bank.

Q. Mr. Kelly, I show you People's Exhibit 5 in evidence, would you look at the reverse space of that—the reverse side of that check?

A. Yes.

[fol. 494] Q. Can you tell us from the validating stamp the date the check went through the Michigan Avenue National Bank?

A. June the 20th, 1961.

(A deposit ticket was marked People's Exhibit 51 for identification.)

(People's Exhibit 51 for identification, a deposit slip, was received in evidence and marked People's Exhibit 51 in evidence. A photostat of same was received in evidence and marked People's Exhibit 51-A in evidence.)

(A deposit slip was marked People's Exhibit 52 for identification.)

Q. Mr. Kelly, I show you People's Exhibit 35 in evidence, will you take a look at the back of that?

A. Yes.

Q. Do you have the date when that check cleared through the Michigan Avenue National Bank?

A. February 19th, 1962.

(A photostat of People's Exhibit 52 for identification was marked People's Exhibit 52-A for identification.)

Q. Now, is that a deposit ticket of the Michigan Avenue National Bank?

A. Yes.

(People's Exhibits 52 and 52-A were received in evidence.)

[fol. 495] Q. Mr. Kelly, I now show you People's Exhibit 37 in evidence and ask you to look at the reverse face of People's 37. Does that check bear the validating stamp of the Michigan Avenue National Bank?

A. I'll check this one out, sir.

The Court: (To the witness) May I ask you, sir, do you see the month it cleared?

The Witness: Yes. I see "August" on here.

The Court: And do you see the year?

The Witness: '62, yes.

The Court: All right. Thank you.

The Witness: That's it.

The Court: But the date is not clear.

The Witness: The date is not clear, no, Judge, I can't see it.

Mr. McKenna: I ask that this be marked People's Exhibit 53 for identification.

(Whereupon, a check above referred to was marked People's Exhibit 53 for identification.)

Q. I ask you to look at the face of People's Exhibit 53 for identification.

A. Yes, sir.

Q. What does that stamp reflect?

A. That stamp reflects that it's a teller's stamp and it reflects the fact that it was cashed at the teller's cage.

Q. Just one small point. The signature card—

By Mr. McKenna:

Q. What's the signature that's on People's Exhibit 48-A?

A. R. Berger.

Q. Is there any other authorized signature?

A. No, there isn't.

[fol. 496] Q. So that the funds of the Lee Berco Co., Inc., on deposit at the Michigan Avenue National Bank can only be withdrawn on the signature of R. Berger. Is that correct?

The Witness: That is the fact.

TIMOTHY DEMPSEY, residing at 4726 Forty-Ninth Street, Woodside, Long Island, New York, called as a witness in behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct examination.

By Mr. McKenna:

Q. Mr. Dempsey, what is your occupation?

A. I'm a general clerk with the Chase Manhattan Bank.

(Whereupon, the following proceedings took place at the bench, on the record but out of the hearing of the members of the jury, between the Court and counsel for both sides:)

Mr. Brill: I object, if your Honor pleases, to the reception of the testimony which will be offered by this witness, which seeks to adduce evidence concerning transactions alleged to have been had in furtherance of the alleged conspiracy, firstly, on the ground, as conceded by the district attorney, all of the evidence in this case is based upon eavesdrops, and I contend that such evidence so obtained, by way of a trespassory invasion of constitutionally protected areas is inadmissible.

I haven't finished, Judge.

[fol. 497] I further object with respect to the testimony of the witness, that he is apparently called to testify to transactions concerning checks drawn to Harry Steinman.

(To Mr. McKenna) That's correct, isn't it?

Mr. McKenna: Just one check.

Mr. Brill: Or a check or checks. My objection with respect to that is on the ground that there has been a failure of proof to establish the conspiracy alleged in Count 2 of the indictment, pursuant to which, I believe, this evidence and testimony is offered.

(To Mr. McKenna) Isn't that correct? I mean as to which it's offered—I don't mean you concede it's a failure of proof.

Mr. McKenna: It's offered on the Playboy count.

Mr. Brill: Yes, I understand that.

And apart from the competency of this witness to testify (I don't know at all about that), these would constitute the basic objections; and, further, on the ground that this matter and his testimony has no probative value in respect of the conspiracy and could merely be inflammatory and not "merely" but would be inflammatory and prejudicial and effect the denial of a fair trial to the defendant.

Mr. McKenna: Just for the purpose of clarifying the record, I conceded, for the purposes of the hearing on the motion to suppress, that for that purpose I would concede all the evidence came from eavesdropping. That's only be-

cause we didn't have to go through the whole process of differentiating what is or what is not eavesdropping evidence. I want the record clear on that. That was done solely for the purpose of that hearing, and the fact that [fol. 498] a Chase Manhattan Bank teller is far removed—

Mr. Brill: It is a lead obtained from eavesdropping and, consequently, is the fruit of the poisoned tree and is subject to the same basic objection that it's obtained through a trespassory invasion of a constitutionally protected area.

The Court: Your motion is denied.

You have an exception.

Mr. Brill: Very good.

May it be deemed that it carries throughout the testimony, so that I don't have to—

The Court: Of this witness.

(Whereupon, at this point the proceedings held at the bench were concluded, and the proceedings were continued, on the record, in open court.)

Q. I show you People's Exhibit 9 in evidence and ask you if you can tell me if People's Exhibit 9 bears the stamp of the Chase Manhattan Bank.

A. Yes.

Q. And what does the stamp on People's Exhibit 9 reflect?

A. The teller's stamp on the check indicates that the check was cashed.

Q. Now, what does that mean?

A. This means that this check was negotiated for cash at the Chase Manhattan Bank, 48th Street Branch.

[fol. 499] HENRY M. CRONIN, Police Detective, Shield No. 1741, Police Department, City of New York, assigned to the District Attorney's Office Squad, New York County, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination.

By Mr. McKenna:

Q. Now, I call your attention to the morning of June 29, 1962. Did you receive an assignment from your commanding officer on that morning?

A. I did, sir.

Mr. Brill: Excuse me, please.

This comes within the area of that—

The Court: General objection we referred to.

Mr. Brill: We will call it the "general objection." We all understand that.

The Court: And your general objection will be deemed on the record with the same force and effect as you made the prior general objection, and the Court makes the same disposition with respect thereto.

Q. As a result of that assignment, what did you do?

A. Approximately ten o'clock I was opposite 580 Fifth Avenue, observing the building which Mr. Nat Roth had offices in.

Q. And did you observe anything from that post?

A. Yes, sir.

Q. Who did you observe?

A. Approximately ten-fifteen—

Mr. Brill: Now, if Your Honor please, I must object on another ground.

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein, [fol. 500] and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

Mr. Brill: In addition to the constitutional ground, it appears now that this witness is about to testify concerning transactions emanating from the office of Nat Roth, who is not a co-conspirator. How could this testimony possibly be binding on the defendant?

The Court: I have no idea with respect to the nature of the testimony which the witness plans to give.

Mr. McKenna: Made an observation of Frank Jacklone, who appears in the company of Nat Roth. He will describe Mr. Jacklone's movements on the morning of June 29.

Mr. Brill: Well, it seems to me, in view of the posture of the evidence with respect to the first count of the indictment that this testimony would be inadmissible.

The Court: Objection overruled.

(At this point the proceedings at the bench were concluded, and the following took place within the hearing of the jurors and the alternate jurors.)

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Q. Tell us what you observed.

A. I observed Mr. Frank Jacklone standing outside the entrance of 580 Fifth Avenue. A few moments later Mr. Nat Roth came out. They had a short conversation. About 25 feet or so north of 580 entrance on Fifth Avenue there were two gentlemen standing. Both Mr. Jacklone and Mr. Roth went up and had a short conversation with them. The four gentlemen then left and went down Fifth Avenue to Schrafft's Restaurant. They entered Schrafft's Restaurant. In approximately 20 minutes, 25 minutes, the four men came out of Schrafft's Restaurant. Mr. Jacklone walked [fol. 501] north on Fifth Avenue to 48th Street. Mr. Roth stayed on the corner of 46th Street and Fifth Avenue and spoke to these two unknown persons. Mr. Roth then walked

north to the entrance of his building. I then tailed the two unknown—

Q. Stop there. Did you follow Frank Jacklone—

Mr. Brill: Now, if Your Honor please, I think I am compelled to say what I have to say on the record. If you want me to say it in front of the jury, I will be glad to do it.

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

Mr. Brill: I think that the atmosphere of mystery and of police activity creates an animus in the minds of the jury toward this defendant. This evidence is not probative of anything. The answer which he gave in a full description, surrounded as it was with a cloak of mystery, can be calculated only to inflame and prejudice the jury unfairly against this defendant. I am constrained, first, to ask Your Honor to strike it and direct the jury to disregard it; and, in the alternative, if Your Honor denies my motion, to ask for the withdrawal of a juror and the declaration of a mistrial.

The Court: Strike out that portion of his answer which says, "I tailed the two unknown men."

Mr. Brill: I think it goes beyond that. I think it goes to the whole answer.

The Court: No. I deny your application with respect to the balance of his answer.

Mr. Brill: All right. Your Honor has denied the other motion, the alternative motion, as well?

[fol. 502] The Court: What was the alternative motion?

Mr. Brill: The other was for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

(At this point the proceedings at the bench were concluded, and the following took place within the hearing of the jurors and the alternate jurors.)

The Court: I think the jury should be informed that the Court struck from the witness' answer the latter portion of it wherein he said, "I then tailed the two unknown men." I struck it out.

Q. Did you maintain observation on Mr. Jacklone after that?

A. No, sir.

Q. Now, did there come a time in December of 1962 when you met the defendant, Ralph Berger?

Mr. Brill: Excuse me. This is post the date alleged—

The Court: As the termination date of the conspiracy.

Mr. Brill: Yes, Your Honor, and I object to it.

The Court: Sustained.

Mr. McKenna: Your Honor, I think I will make an offer at the bench.

* * * * *

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein, and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

The Court: Make your offer.

Mr. McKenna: Your Honor, the objection goes to his seeing Berger in 1962, December of '62.

Now, I am going to put a witness on and ask him if he had a conversation with Ralph Berger in December of 1962. [fol. 503] He will say he did.

I will ask him where it occurred.

He will say Chicago.

I will ask him if he observed Ralph Berger do anything in December of '62 in that conversation or during that conversation.

Mr. Brill: You are going to ask him for what the conversation was on the theory of admission?

Mr. McKenna: No, not on the theory of admissions.

Mr. Brill: I just want to know what the theory is.

Mr. McKenna: In response to my question, "What did you observe Ralph Berger do?" he will testify he saw Ralph Berger take three cards out of his pocket and tear those cards into small pieces and attempt to dispose of those cards.

Detective Cronin will testify he retrieved the pieces of those cards, put them together, and I will offer those cards into evidence.

These cards contain, one of the cards is the card of Martin C. Epstein. I will show that the extension number reflected on that card is his extension at the New York State Liquor Authority.

Mr. Brill: What of it?

Mr. McKenna: One of the cards also bears the name Harry Neyer. And, finally, on the third card, it bears the name of Harry Neyer.

The Court: What does this card mean?

Mr. Brill: Some linen supply company.

Mr. McKenna: "Harry Neyer."

The Court: Written on it?

Mr. McKenna: Right. And also, sir, that this is the telephone number of Harry Neyer, Circle 6-7470. And this is another card of Harry Neyer, the third card, that the [fol. 504] defendant attempted to tear up and destroy at that time, and I believe that these pieces are evidence connecting the defendant to Martin Epstein and Harry Neyer and are probative and tend to connect him with the entire conspiracy, and also bears the hospital on the back of one of the cards, the address of the hospital.

Mr. Brill: Your Honor, these three cards not only bear some of the matter which Mr. McKenna has described, but also bear a great deal of other matter. Now, to permit the jury to have available to it such evidence in this atmosphere which he describes again is not corroborative of anything. It is post the date of the termination. It couldn't be said to the evidence of an admission.

Mr. McKenna: It is evidence of guilty knowledge.

Mr. Brill: No, not guilty knowledge. That is positively contradictory to everything that, the whole principle of what guilty knowledge stands for. It is certainly not evidence of anything. It is not probative. It is inflammatory and it is prejudicial, and I press the objection, if Your Honor please.

Mr. McKenna: Just to satisfy Mr. Brill, I intend only to direct the jury's attention to those parts of these cards referring to Martin Epstein and Harry Neyer.

Mr. Brill: No, no, you can't do that.

The Court: I am now looking at these cards. I see no other matter on there which could conceivably be prejudicial. Can you point it out? And if you can, I will delete it. [fol.505] Mr. Brill: I don't know what the matter is, Judge, and I don't think you can delete it. I don't know whose handwriting appears on all these items. There is no evidence of that. That is No. 1.

There is nothing to show what these mean. There are lots of notes on these things. There is another name that appears on there.

The Court: All other matter will be deemed deleted.

Mr. Brill: My objection goes to the whole of the testimony. It also goes to the limited reception which Your Honor gives to it, deleting other matters. It is impossible to delete this kind of thing.

The Court: All right, you may proceed.

Your objection is overruled.

(At this point the proceedings at the bench were concluded, and the following took place within the hearing of the jurors and the alternate jurors.)

Q. Detective Cronin, in December of 1962, did you meet the defendant, Ralph Berger?

A. I did, sir.

* * * * *

Q. Do you recall the date in December of '62 when you met the defendant, Ralph Berger?

A. December 10, 1962, approximately one-thirty, one-twenty to one-thirty p. m.

Q. And where was it that you first met the defendant, Ralph Berger?

A. 111 Wabash Avenue, Room 811, Chicago, Illinois.

Q. Did you meet with Ralph Berger anywhere else on December 10, 1962?

A. Yes, also at 2600 South California Avenue, Chicago, Illinois.

Q. And at the latter address, did you have a conversation with the defendant, with Mr. Berger?

[fol. 506] A. From the time I met Mr. Berger until we got to 2600 I was with him all the while and we had conversations.

Q. But I mean in 2600 did you engage Mr. Berger in conversation?

A. Yes, sir.

Q. Now, did you observe Mr. Berger do anything during this period of time that you were with him at 2600 South California Avenue in Chicago?

A. Yes, sir.

Q. Please tell us what you observed Mr. Berger doing.

A. We were standing in the corridor outside Room 242. Mr. Berger took a card or a piece of paper at that time which I—put it behind his back, ripped it into small pieces and threw it into a supply room entrance. Then he reached in, took another piece of paper or so out of his pocket, overcoat pocket, ripped it into so many parts and walked over and dropped it into a metal garbage can which was about three foot high. I then asked one of the—

Q. Did you have a conversation with somebody else at that time?

A. Yes, sir.

Q. And did Mr. Berger leave your presence?

A. Yes, sir.

.

Q. Did you retrieve the first piece of paper that was torn?

A. Yes, sir.

Q. Did you retrieve the second piece of paper that was torn?

A. Yes, sir.

The Court: Where did you retrieve it from, the first piece?

The Court: Then would it be fair to say you retrieved it from the floor?

The Witness: That is where it was.

[fol. 507] Q. And the second piece of paper, where was that retrieved from?

A. It was in a waste, garbage disposal, waste paper basket in the hallway.

Q. And did you put those pieces of paper together?

A. I did, sir.

Q. Did you retain those pieces of paper?

A. Yes, sir.

Q. And where did you place those pieces of paper that you retained?

A. In these envelopes (indicating).

Mr. McKenna: May I ask that these be marked for identification.

(The envelopes referred to were marked People's Exhibits 54 and 55 for identification, respectively.)

Mr. McKenna: At this point I now offer the cards in evidence as People's Exhibit 55 and People's Exhibit 56.

(Whereupon, the following proceedings were had at the Bench, out of hearing of the jurors and the witness:)

Mr. Brill: The objection is further made on the ground that in the light of the testimony of this witness there is no basis for the reception now of these three papers, or cards, whichever way they may be characterized. He has not testified to three cards.

The Court: The objection is overruled.

I will delete all matter which is immaterial from these cards and direct the witness to indicate in the record what part of the card is being offered.

[fol. 508] Mr. McKenna: Direct the District Attorney, you mean?

The Court: I mean to direct the District Attorney, rather, to indicate in the record the particular part of the card that is being offered in evidence, since there is much writing on each of the cards.

Mr. McKenna: On People's Exhibit 56, I just offer "Harry Neyer, Attorney at Law". It is a printed attorney's card "22 West 48th Street, New York 36" and it has the number "Circle 6-7470".

Mr. Brill: Is this offered in support of Count 1?

Mr. McKenna: It is the Jacklone—

Mr. Brill: Count 1.

Mr. McKenna: And on the back it has "New York Hospital, 68th and River", and that is all I am offering, as far as 56 goes.

The Court: All other matter written thereon is deemed deleted from the exhibit.

Mr. Brill: Well, your Honor, you might observe that that which occurs on the back, being offered as a part, or a portion of this, although my objection goes to all of it as well—this is written in a handwriting that has not yet been identified.

Mr. McKenna: It doesn't have to be—

Mr. Brill: It doesn't have to be? Is that a new principle of law I just learned today?

The Court: This, I understand, is offered in support of the first count, the Jacklone count?

Mr. McKenna: Yes.

Mr. Brill: I object to it on the ground—

Mr. McKenna: It has the hospital, it also applies to the second count.

Mr. Brill: You just have something written on the back—

[fol. 509] Mr. McKenna: It says: "New York Hospital, 68th and River".

The Court: I will allow it, you have an exception.

Mr. Brill: All right, in respect to the first count in support of which this is offered, it is objected to further on the ground that there has been no showing by the People, up to this point, that there has been, in fact, a conspiracy to bribe a public officer and to influence his actions as charged in Count 1.

Now, with respect to the back of this Exhibit Number 56—

Mr. Brill: In so far as the back is concerned in this, it is written, or the word is written "N. Y. Hospital, 68 and River". Right?

Mr. McKenna: Yes.

Mr. Brill: That is objected to because it has no probative value in support of either the first or second counts, the People not having sustained that burden.

Mr. McKenna: As to People's Exhibit 57, it is the glass case containing two cards. I am offering the card that contains the name "Martin C. Epstein." It is printed: "Chairman, New York State Liquor Authority, 270 Broadway". It has the seal of the State of New York in the upper left-hand corner, it bears the phone number "BA 7-1616, Extension 7164, and 7654."

Mr. Brill: Both of which are in the handwriting of an unidentified person.

Mr. McKenna: On card number 2, I offer the handwriting "Harry Neyer, CI. 6-7470," and the address: "22 [fol. 510] West 47th" and on the right-hand side, it has "home" and "HO 4-1618", and I might also point out that this same number on People's Exhibit 56 has "Home. HO 4-1618".

Mr. Brill: Now, your Honor, again, first with respect to Exhibit 56, there is no showing as to whose handwriting the back of that card bears. The notations for which it is offered—

Mr. McKenna: I have one more offer on 57. On the back of one of the cards it has written the figures "East 80th, Lexington and Third, Nat Roth".

Mr. Brill: Now, my objection to all of these handwritten matters on both of these cards is that there is now showing that they are in the handwriting of the defendant, and that they are of no probative value and do not support either of the charges made, and they are inadmissible inasmuch as there has been no showing in connection with them that they constituted admissions, or that they have any probative value whatsoever.

The Court: All right, all other matter not noted by the District Attorney on the cards is deemed deleted.

Mr. Brill: I would like, your Honor, I would like you to observe it, it is impossible to delete that, if the jury is to get any of these exhibits, this 56 or 57. It would be physically impossible to delete anything else that is on there.

Mr. McKenna: Judge, I will just read the portions on the card to the jury and I will consent that they do not see the card.

The Court: Can the deleted portion be covered up?

Mr. McKenna: They could.

Mr. Brill: How could you deny the jury—

[fol. 511] The Court: Cover them up.

Mr. Brill: How can you deny the jury—

The Court: I just directed the District Attorney to conceal by some form of tape that part that the Court has declared deleted.

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(People's Exhibits 56 and 57 for identification were then received in evidence and marked People's Exhibits 56 and 57 in evidence, respectively.)

The Court: Let Mr. Brill see some of the statements.

Mr. McKenna: I offer as Court's Exhibit 26 for identification an observation reported dated June 29th, 1962, Detective Feeley and Cronin, one page, signed by Detective Cronin.

(The report referred to was marked Court's Exhibit 26 for identification.)

Mr. McKenna: As Court's Exhibit 27 for identification, I offer the Grand Jury testimony of Detective Cronin, pages 379 to 386, the testimony given on January 2nd, 1963.

(The Grand Jury testimony of Detective Cronin was marked Court's Exhibit 27 for identification.)

Mr. McKenna: As Court's Exhibit 28 for identification, a report dated December 13th, 1962, of Detective Nicholson and Cronin, signed by Detective Nicholson, consisting of two pages, consisting of one and a half sheets. We stop at 5 and go to 6—part of 5—this was an investigative report pertaining to other people in this investigation, other than Ralph Berger, and not connected with this trial in any way.

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[fol. 512]

October 23, 1964,
11:45 a. m.

• • • • •

HENRY M. CRONIN, a witness on behalf of the People, having been previously duly sworn, resumed the witness stand and testified further as follows:

Direct examination.

By Mr. McKenna (Continued):

Mr. McKenna: Your Honor, I have complied with the Court's direction with regard to Exhibits 56 and 57 (handling).

They are now in evidence. May I read them to the jury?
The Court: You may.

Mr. McKenna: Exhibit 56 is a card containing printing on it, the name "Harry Neyer, Attorney-at-Law, 22 West 48th Street," a handwritten number at the top, "CI-6-7470." On the back of the card is "New York Hospital, 68 and River, Home: HO-4-1618."

Exhibit 57 is two cards. One of the cards is a printed card bearing the imprint, "Martin C. Epstein, Chairman, New York State Liquor Authority, 270 Broadway." The upper left-hand corner is the seal of the State of New York. Also handwritten on the face of that card is VA-7-6544 and VA-7-1616, Extension 7164.

On the back of the second card it has handwriting on it, "CI-6-7470, 22 West 47, Harry Neyer, Home: HO-4-1618."

• • • • •

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein, [fol. 513] and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

• • • • •

Mr. McKenna: While we are here, Your Honor, I submitted to Mr. Brill a typewritten report of Detective Cronin concerning his December, 1962, visit to Chicago. I cut out

some of the confidential information that Detective Cronin related in that report. I have shown it to Mr. Brill and he wishes to use it. I would ask the Court for a ruling. I don't believe it has any part in the case and it could damage the people.

(Thereupon, the paper referred to was marked Court's Exhibit 28-A for identification.)

The Court: Is it fair to say that you are not going to ask him for the name of the informer?

Mr. Brill: I am certainly not going to ask him for the name of the informer.

The Court: At this point, after conferring with the District Attorney, the District Attorney agrees that Exhibit 28-A becomes part of Court's Exhibit 28, with the understanding had that certain names mentioned therein will not be referred to by counsel in his cross examination of the witness, and no inquiry will be made with respect to the alleged informer.

[fol. 517] DAVID A. GOLDSTEIN, 155 Leonard Street, New York, N. Y., an Assistant District Attorney, New York County, recalled as a witness on behalf of the defendant on the *voir dire*, having been previously duly sworn, resumed the witness stand and testified further as follows:

Direct examination.

By Mr. Brill:

Q. Mr. Goldstein, were you in your official capacity present in the City of Chicago, Illinois, on the 10th day of December, 1962?

A. Yes.

Q. When you went to Court that day did you go for the purpose of obtaining this document which is Exhibit P for identification?

A. Yes, based upon a certificate and affidavit from the Supreme Court of the State of New York.

Q. And this is the document which you got from the State of Illinois, County of Cook, in the Criminal Court of Cook County, is it not, signed by Judge Boyle?

A. The Deputy Sheriff received that.

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Q. And did you and the Deputy Sheriff then go together to 111 Wabash Avenue?

A. That is Mr. Berger's office of Lee Berco Co., Incorporated, that is the place?

Q. That is the same place Detective Cronin was talking about, isn't it?

A. I don't know the exact address but we went to the office of Lee Berco Co., Incorporated.

Q. All right, did you and the Deputy Sheriff there join Detective Cronin, Detective Nicholson and three members of the Chicago Police Department?

A. I don't remember if there were three members, but we joined Detective Nicholson and Cronin and some members of the Chicago Police Department.

[fol. 518] Q. All right, and then at that time did the Deputy Sheriff have this document, Exhibit P for identification, in his possession?

A. Yes.

Q. And did you observe that he served it upon Mr. Berger?

A. I would say, yes.

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(Defendant's Exhibit P for identification was then received in evidence and marked Defendant's Exhibit P in evidence.)

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Cross examination

By Mr. McKenna:

Q. Were other documents served on Mr. Berger that day beside Exhibit P?

A. Yes.

(A Court order was marked People's Exhibit 58 for identification.)

Mr. Brill: I invite your Honor's attention to the fact it is unsigned, undated, and it has no probative value.

Q. Now, Mr. Goldstein, what other paper were served upon Mr. Berger in December of 1962, in Chicago?

A. Referring to the documents marked for identification, another copy of this document was served on Mr. Berger and it was a certificate signed by a Judge of the Supreme Court of the State of New York and my affidavit in support of that certificate.

[fol. 519] Q. And did you retain the photostats of the papers served on Mr. Berger?

A. That is this, marked for identification?

(People's Exhibit 58 for identification was then received in evidence and marked People's Exhibit 58 in evidence.)

Mr. Brill: Your Honor, you have noted my objection to the reception of this document?

The Court: I have.

Mr. Brill: Does your Honor want me to state further grounds?

The Court: I don't need it. I note that the document you introduced made specific reference to the document introduced by the People.

(Whereupon, there was a discussion at the Bench, off the record, between the Court and counsel, after which the following proceedings were had in open Court:)

Mr. Brill: I am sorry, but the testimony of this witness—

The Court: Do you know who signed this order, originally, which Justice of the Supreme Court of New York County signed it?

The Witness: Justice Carney.

The Court: That was received in evidence. Step down.

Mr. Brill: No, I want to ask him.

The Court: All right.

[fol. 535] WILLIAM F. REILLY, Police Officer, Shield No. 7507, attached to the 103d Precinct, Police Department, City of New York, temporarily assigned to the District Attorney's Office, New York County, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination.

By Mr. McKenna:

Q. I direct your attention to May 28, 1962. On that date, did you receive an assignment from your commanding officer?

A. I did.

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein,

and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

Mr. Brill: First, Your Honor, I object to the eliciting of any testimony from this witness on the ground that, as in the case of all of the witnesses preceding him on behalf of the People, the evidence was illegally obtained by a trespassory invasion of constitutionally protected areas. It may be that there will be evidence offered which requires additional and separate motions, but in order to—objections, rather, instead of motions—but in order to avoid the necessity for making this objection in respect of each [fol. 536] question and answer, may it be deemed that this objection goes to the entire line, and that Your Honor's ruling goes to the entire line, and that I have an exception to the entire line.

The Court: And I believe that is eminently fair. We have referred to this type of objection as a general objection; is that correct, sir?

Mr. Brill: It is, sir.

The Court: Now, I have ruled uniformly throughout this trial adversely to your position, is that correct, sir?

Mr. Brill: Unhappily, yes, sir.

The Court: In any event, you should, if you deem it advisable, make any other objection specifically directed or directed specifically at a particular question asked.

Mr. Brill: Very good.

The Court: Would you do that?

Mr. Brill: Yes, sir, I will try to.

(At this point the proceedings at the bench were concluded and the following took place within the hearing of the jurors and the alternate jurors.)

Q. If I may go back, Detective Reilly, on May 28, 1962, did you receive an assignment from your commanding officer?

A. I did.

Q. What did you do?

* * * * *

The Witness: On May the 28th, at approximately 4:30 p. m., I was assigned to the vicinity of 22 West 48th Street, to make observations on people entering and leaving that building.

Q. And can you tell us—I direct your attention to the afternoon, the time of approximately 4:30 p. m.; did you make any observations at that time?

A. I did.

[fol. 537] Q. Tell us what you observed?

Mr. Brill: I object to this, if your Honor please.

The Court: Overruled.

The Witness: I observed three male whites exiting from the building at 22 West 48th Street.

Q. Do you know who they were?

A. Yes, I do.

Q. Who are they?

Mr. Brill: I object to it.

The Court: Overruled.

The Witness: Harry Steinman, Frank Jacklone, and Tony Pucci.

Q. Pucci?

A. That's right.

Q. And what did you observe them do?

Mr. Brill: I object to it, if your Honor please.

The Court: You may answer it.

The Witness: They engaged in a short conversation, and then they separated. Harry Steinman walked east on 48th Street to an office at 15 East 48th Street, Frank Jacklone and Tony Pucci entered the Korvette Store, I believe at 20 or 24 West 48th Street.

* * * * *

By Mr. McKenna:

Q. Did you overhear any conversation between Frank Jacklone, Harry Steinman, or Tony Pucci? Just answer yes or no?

A. Yes.

Q. Who was it that you heard?

Q. Which one?

A. Harry Steinman.

[fol. 538] Q. On June the 27th, 1962, in the vicinity of New York Hospital, did you observe the defendant Ralph Berger?

A. I did, yes, sir.

Q. Now, approximately what time did you see Ralph Berger on June the 27th, 1962?

A. At approximately five p. m.

Q. And where were you when you saw the defendant, Ralph Berger?

A. I was exiting from the elevator on the 16th floor of the New York Hospital.

Q. And where was Ralph Berger?

A. In the public telephone booth, directly outside the elevator.

Q. You had a conversation with somebody?

A. I did.

Q. With whom?

A. With Detective Poulos.

Q. And after the conversation what did you do?

A. I returned to the lobby of the hospital.

Q. Did you overhear anything said by Mr. Berger in that telephone booth?

A. No, not at this time.

Q. Did you again see Mr. Berger on June 27th, 1962?

A. At about 6:10 p. m., he appeared in the lobby of the New York Hospital.

Q. And what did you observe him do?

A. He made several phone calls from a bank of public telephones in the lobby of the New York Hospital.

Q. And did you overhear anything that was said by Mr. Berger on that occasion?

A. Actual words, no.

Q. Did you hear his voice?

A. I heard his voice.

Q. And did you observe Mr. Berger leave that bank of telephones in the lobby?

A. I did.

Q. And did you observe where he went?

A. He left the hospital.

Q. Did you maintain observation on Mr. Berger?

A. I maintained observation on Mr. Berger from the [fol. 539] hospital to East 68th Street and York Avenue where he entered the taxicab.

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Mr. Brill: Your Honor, I move to strike all of the testimony given by this witness with respect to the transactions concerning which he testified as having occurred on June the 27th, 1962, as having no probative value. Here again we have presumptively a respectable witness, a member of the Police Department of the City of New York, testifying to exactly nothing.

However, he is creating the implication and giving rise to the inference that because he testifies that there must be something sinister to the activities of the defendant Berger. All of the acts concerning which he testified are such innocent acts they are without any significance and could not possibly—because there has been no proof in support of it—be said to be in support of any conspiratorial, alleged conspiratorial, acts.

On the other hand, to permit the testimony to stand and to fail to instruct the jury to disregard it, gives rise to a situation again where because of the atmosphere created of a highly inflammatory and prejudicial nature, the right to a fair trial on behalf of the defendant Berger is negated.

Mr. McKenna: Your Honor, I just offer this testimony because it ties in with that of Detective Finley and Poulos as to the transactions that occurred on June 27th.

Mr. Brill: It wasn't offered for any such limited purpose and it certainly does not leave that impression with anybody.

Mr. McKenna: Your Honor, he has already raised the issue in the observation report. He cross examined Detective Finley on that.

[fol. 540] The Court: I will allow the testimony to stand.

(Proceedings were then resumed in open Court, as follows:)

By Mr. McKenna:

• • • • •

Q. And while in the vicinity of the New York Hospital on June the 29th did you see Mr. Berger?

A. I did.

Q. And approximately when did you first see him?

A. Approximately 2:30 p. m.

Q. And where did you see him?

A. On the sixteenth floor of the New York Hospital.

• • • • •

Q. And did you observe what Mr. Berger did from the point of your first observing him?

A. He entered the Room 1619 on the sixteenth floor of the New York Hospital.

Q. Did you see Mr. Berger exit from that room?

A. No, I did not.

Q. What did you do after you saw him in Room 1619?

A. I returned to the lobby of the New York Hospital.

Q. Did you see Mr. Berger again that day?

A. Later on in the afternoon.

Q. Approximately what time?

A. At approximately 3:40 p. m., he entered the lobby from the elevator and again made several phone calls from a bank of telephone booths in the lobby of the New York Hospital.

Q. Were you able to overhear any of Mr. Berger's conversation in that bank of phone booths?

A. No, sir.

Q. And after the phone calls were completed did you observe what Mr. Berger did?

A. He exited from the hospital and got into a taxicab and left the scene.

Q. Now, Officer, I direct your attention to June the 28th, 1962.

[fol. 541] Mr. Brill: Your Honor, may the record show that the motion which I made with respect to the 27th is made in full detail with respect to June the 29th?

The Court: Granted.

Mr. McKenna: Could I have this marked as Exhibit 60 for identification.

(An eavesdropping order was marked People's Exhibit 60 for identification.)

(Whereupon, there was a conference at the bench, off the record and out of the hearing of the members of the jury, between the Court and counsel for both sides, after which the following proceedings took place on the record in open court:)

Mr. McKenna: Your Honor, I am going to ask you to take judicial notice of People's Exhibit 60 for identification as being an order of the Supreme Court of the County of

New York, and I am referring merely to the middle of the first page of People's Exhibit 60 down through the second page of People's Exhibit 60.

Mr. Brill: Your Honor, I object to the partial—to the request that your Honor take judicial notice partially of the paper.

The Court: I'll take judicial notice of the entire order.

Mr. Brill: Well, your Honor may have the right to do that, but I don't believe that this belongs in this case.

I object to the offer and the request. But certainly—
[fol. 542] The Court: Your objection is overruled.

You may proceed.

Mr. Brill: Do I understand now that it may be referred to by counsel, in view of—

The Court: It's not in evidence. I merely take judicial notice of the fact that such an order exists.

Mr. Brill: That's meaningless, so far as the jury is concerned.

The Court: (To Mr. McKenna) You may proceed.

By Mr. McKenna:

Q. Detective Reilly, I show you People's Exhibit 60. Will you take a look at it.

A. (Witness inspects the exhibit, as requested.)

Q. Now, Detective Reilly—

Mr. Brill: Just so the record is clear, your Honor, may it appear that this is the same document which was formerly marked Exhibit 2 on the preliminary hearing before the Court.

The Court: I grant your application.

This is the same document.

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Q. Pursuant to the order contained in People's Exhibit 60, did you do something?

A. I did.

Mr. Brill: I object to it.

The Court: I overrule your objection.

(To the witness) What, if anything did you do?

Mr. Brill: I object to this.

A. I overheard conversations emanating from the offices of Harry Neyer.

Mr. Brill: I object to it, if your Honor pleases, and move to strike it.

[fol. 543] The Court: I'll allow it.

Q. You said "Harry Neyer"; is that correct?

A. Harry Steinman, I'm sorry.

Mr. Brill: My motion is directed to that portion of the answer, as well.

The Court: I'll allow it.

Q. Now on June the 28th, 1962 can you tell us what you were doing that day.

A. I was assigned to overhear conversations emanating from Room 801 of 15 East 48th Street.

Q. Besides overhearing the conversations, did you receive any other instructions?

A. Yes.

Q. What did you do?

Mr. Brill: I object to it.

The Court: I'll allow it.

A. I made tape recordings of the conversations.

Q. In what manner were you overhearing conversations emanating from Room 801 at 15 East 48th Street?

A. I was overhearing the conversations by means of an electronic eavesdropping device that was in the office of Harry Steinman.

Q. Do you have an independent recollection of conversations occurring in the office of Harry Steinman on June the 28th, 1962?

A. I do.

[fol. 544] Did you hear any conversations emanating from the offices of Harry Steinman on June the 28th?

A. I did.

Q. Did you recognize the voices of the participants in that conversation?

A. I did.

Q. Had you heard any of those voices previous to June 28th, 1962?

A. I did.

Q. Will you please be specific whose voice you had heard previous to June 28th, 1962?

A. I heard Harry Steinman's voice.

Q. When was that?

A. On March 28th.

Q. March of what?

A. May 28th.

Mr. Brill: I object to it and move to strike it.

The Court: Overruled.

Mr. Brill: Your Honor will find, upon a reference to the indictment, that this is without the period.

Mr. McKenna: It is not being offered with regard to the period, your Honor.

The Court: Objection overruled.

Q. Did you recognize any other voice on June 28th, 1962?

The Witness: Yes.

Q. On June the 28th, 1962, did you overhear a voice other than Harry Steinman?

A. I did.

Mr. Brill: That is objected to. Move to strike it.

The Court: Overruled.

Q. Previous to June the 28th, 1962, had you heard that same voice on another occasion?

A. I did.

[fol. 545] Q. Whose voice, besides Harry Steinman, did you hear on June the 28th?

Mr. Brill: Just a minute, please. That's objected to, your Honor, in view of the testimony which this witness has previously given, concerning which I addressed a motion.

The Court: Your motion is denied.

Your objection is overruled.

(To the witness) You may answer that question.

The Witness: Would you repeat the question, Mr. McKenna.

By Mr. McKenna:

Q. Whose voice, beside Harry Steinman, that you heard emanating from Room 801 on June 28th, 1962—

Mr. Brill: I object to it.

Q. (Continuing) —had you heard previous to that?

The Court: Mr. McKenna, have you laid a foundation for establishing the identity of this other voice?

Mr. McKenna: Yes, I did, your Honor.

The Court: (To the witness) Had you heard this other voice before, sir?

The Witness: I did.

The Court: When?

The Witness: On June 27th, at the New York Hospital.

Mr. Brill: Now will your Honor entertain us at the side bar for just a moment, please. I want to point something out here.

(Whereupon, the following proceedings took place, on the record, at the bench, between the Court and counsel for [fol. 546] both sides, but out of the hearing of the members of the jury:)

Mr. Brill: I respectfully refer your Honor to the testimony of this witness with respect to his activities on June the 27th, 1962.

The Court: Let me get my record.

Mr. Brill: Yes, sir. All right.

The witness testified, unequivocally, in response to questions put by the district attorney, as to what he overheard, and he said he overheard nothing in connection with any of the telephone conversations which he claimed the defendant Berger made from the telephone booths in the hospital. He overheard nothing.

Mr. McKenna: Your Honor, the answer is, he overheard him but he can't say he overheard words.

The Court: Your recollection, Mr. McKenna, conforms with the notes which I have made, wherein the witness stated that on June 27th, 1962, at about 6:10 p. m., the defendant was in the lobby of the New York Hospital and made several phone calls, and that he heard his voice.

Mr. Brill: No. He said he overheard nothing.

Mr. Goldstein: That's my recollection, too.

Mr. McKenna: He heard his voice.

Mr. Brill: He overheard nothing. And your Honor omitted that portion from your Honor's notes.

The Court: My recollection is that he was not able to make out the specific words but he did hear him speak.

Mr. Brill: The language that he used, in my recollection—I don't want to quarrel with your Honor—but I think the record will show that he didn't hear anything that was said in those conversations.

[fol. 547] Mr. Goldstein: That's not my recollection, either.

Mr. Brill: The record will show what it is.

The Court: Let us proceed.

(Whereupon, the following proceedings took place, on the record, in open court:)

The Court: Objection overruled.

By Mr. McKenna:

Q. Subsequent to June the 28th, this voice, besides that of Harry Steinman, did you hear it?

A. I did.

Q. Can you tell us when you heard it.

A. On June 27th.

Mr. Brill: "Subsequently," is what he asked him.

Q. Subsequently to June 28th, did you hear this voice?

A. On June 29th.

Q. And where did you hear this voice?

A. In the New York Hospital.

Q. And you say now it's the same voice you heard on June the 28th. And I am referring to the voice, other than that of Harry Steinman.

Mr. Brill: I object to it.

The Court: Overruled.

A. Yes.

Q. And whose voice was it, besides that of Harry Steinman's, that you overheard on June the 28th?

A. Ralph Berger.

Mr. Brill: Objected to.

The Court: Overruled.

Q. Now approximately what time did you hear the voices emanating from Room 801, 15 East 48th Street?

A. At approximately, 1:42, 1:45 p. m.

[fol. 548] Q. And do you have an independent recollection of what you heard on that—at that time, on that day?

A. I do.

Q. Can you tell us what you independently recollection you overheard.

Mr. Brill: I object to it, if your Honor pleases, and this goes, also, to what we now call in this case the "general objection."

The Court: Overruled.

Q. Just tell us what you recollect was said, and by whom.

A. Mr. Berger said, "This is exactly what he didn't want to happen, Harry."

Harry Steinman recounted with, "Well, it only says they're going to open the club on October 11th."

Mr. Berger repeated, "This is exactly what they didn't want to do. They didn't want them to even mention the name 'key club.'"

The Court: (To the witness) Were there two conversations that day?

The Witness: Yes, sir.

The Court: Now with respect to the first conversation, have you given the Court and jury all that you say you overheard?

The Witness: That's right.

By Mr. McKenna:

Q. Did you hear a subsequent conversation on June the 28th, 1962?

A. I did.

Q. Was that emanating from Room 801, at 15 East 48th Street?

Mr. Brill: Objection.

The Court: I'll allow it.

[fol. 549] Q. Approximately, what time did you hear this conversation?

A. This was approximately five o'clock.

Q. Did you recognize the voices participating in that conversation?

A. I did.

(Whereupon, Juror No. 4 stood up in the jury box, and said, "May I say something!")

The Court: (To Juror No. 4) Would you please step out. Counsel, step up.

(Whereupon, the following proceedings took place, on the record, at the bench; but out of the hearing of the remaining members of the jury, between the Court, counsel for both sides, and Juror No. 4:)

The Court: State your name.

Juror No. 4: John Bierhorst.

The Court: What is your question, sir?

Keep your voice low.

Juror No. 4: Would it be appropriate to have a fuller explanation of how this conversation was overheard?

The Court: I think the testimony may develop it.

Is that correct, Mr. McKenna?

Mr. McKenna: Yes.

The Court: (To Juror No. 4) So why not wait.

Juror No. 4: We would have that explanation?

The Court: Oh, yes.

Juror No. 4: Thank you.

(Whereupon, Juror No. 4 returned to his seat in the jury box, and the following proceedings took place, on the record, in open court:)

[fol. 550] By Mr. McKenna:

Q. Now subsequent to this first conversation, did you overhear a second conversation emanating from that room?

A. I did.

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Q. Whose voices were they?

A. Harry Steinman and Ralph Berger.

Q. Do you have an independent recollection of what you overheard on the second conversation happening on June the 28th, 1962?

A. I do.

Q. And is this a conversation you overheard with your own ears?

A. I did.

Mr. Brill: All of which is objected to.

The Court: Overruled.

Q. Can you tell us what you overheard. And be specific as to who said what.

A. Mr. Berger said to Harry Steinman, "Where is he, Harry? He was supposed to be here several hours ago. Where is this good fellow that's supposed to appreciate favors?"

Steinman had—Steinman responded by saying, "He'll be here, Harry"—"He'll be here, Ralph. Don't worry about it. He'll be here."

This is approximately what I remember.

Q. And is that the sum total of your recollection, your independent recollection, of what was said at that second conversation?

A. No. Mr. Berger made a further comment, words to the effect that "This should be worth fifteen thousand dollars, Harry. If Nat Roth can get ten, this should be worth at least fifteen thousand dollars."

Q. Now is that the total of your recollection concerning that second conversation?

A. Yes, sir.

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[fol. 551] DETECTIVE BOLESŁAW BARANSKY, Shield No. 87, attached to the District Attorney's Office Squad, New York County, Police Department of the City of New York, called as a witness in behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct examination.

By Mr. McKenna:

• • • • •
Mr. Brill: Excuse me, Mr. McKenna.

May the record show that we have taken the same "general objection."

The Court: With the same disposition made by the Court.

• • • • •
Q. What are your duties at the District Attorney's Office Squad?

• • • • •
A. Installation, maintenance of overhear equipment, tape recorders, communication equipment, and other electronic devices.

• • • • •
Q. Now, Detective Baransky, I show you People's Exhibit 60—

Mr. Brill: I object to it, if your Honor pleases.

The Court: Objection overruled.

A. (Witness inspects the document, People's Exhibit 60 for identification.)

Q. Did you do something pursuant to People's Exhibit 60?

A. Yes, I did.

Q. Will you tell us what you did.

Mr. Brill: I object to it.

The Court: Overruled.

[fol. 552] A. Pursuant to this court order, I installed an overheard device in Room 801 of 15 East 48th Street.

Q. Do you recall when it was that you installed this over-hearing device?

A. It was the early morning hours of June 16th, 1962.

Q. What was the overhearing device that you installed?

A. It was a small microphone.

Q. Was that microphone connected to anything?

A. That microphone was connected to unused wires that were located within these premises, 15 East 48th Street, and also in Room 801.

Q. And after you connected the microphone to the unused wires, did you connect the unused wires to anything?

A. The ends, the other end of the unused wires was finally connected to a magnetic tape recorder capable of recording—

Mr. Brill: I object to this.

The Court: I'll allow it. Overruled.

Mr. Brill: "Capable of"?

The Court: (To the witness) You may continue, sir.

A. (Continuing) Capable of recording and monitoring sounds coming over that microphone at the same time.

Q. Now before you connected the wires to this electronic tape recorder, did you test the tape recorder as to its capability of replaying sounds coming into it from a microphone?

A. Yes. Many times.

Q. And was that tape recorder in good working order when you connected it to the wires which were connected to the microphone in Room 801, at 15 East 48th Street?

A. Yes, it was in good working order.

[fol. 553]

October 26, 1964

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein, and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

Mr. Brill: First, I think, Your Honor, we might mark as a Court's exhibit the grand jury testimony of the witness Baransky, which Mr. McKenna handed to me at the close of the session on Friday afternoon, and I take it that would be Court's Exhibit 26.

(The Grand Jury testimony referred to was marked Court's Exhibit 26 for identification.)

Mr. Brill: Mr. McKenna has offered to furnish the date at any time and that is agreeable to me.

Now, Your Honor, in view of the contents of Exhibit 59 for identification, which is a memorandum written by Assistant District Attorney Goldstein on December 11, 1962, relative to the trip and the transactions had in Chicago with the defendant, wherein Mr.—

The Court: Will you read that last remark.

(Thereupon, the Court Stenographer read the remark referred to as recorded.)

Mr. Brill: And with respect to him.

I respectfully invite Your Honor's attention to the last paragraph at the bottom of the first page, which reads: "When the said Ralph Berger was taken into custody on December 10, 1962, at the above-mentioned office," and here I must interpolate parenthetically (the offices at 111 North Wabash Avenue, in Chicago, Illinois), continuing with the exhibit, "(reciprocal-witness proceeding on behalf of the State of New York); the officers, to wit, Detective [fol. 554] Henry Cronin and Detective Robert Nicholson, the District Attorney's Office Squad, Sergeant Donald Lappi, Detective Nat Rodriguez, Chicago Police Department, Intelligence Division, and Deputy Sheriff, William

Dowd, Cook County Sheriff's office," and I guess we might as well put in the rest, in one way, this relates to, not to the custom, but to what the sharing of the office space was, as it appears in that paragraph and as it appears from next to the last paragraph—

Mr. McKenna: Your Honor, I am going to object to reading anything—

Mr. Brill: —at the bottom of page 2—

Mr. McKenna: May I make an objection?

Mr. Brill: Yes, but I am making a motion for the record, and I think I am entitled to, because the Court has seen Exhibit 59 for identification.

Mr. McKenna: But it is not in evidence. You are reading it into the record.

Mr. Brill: This isn't for the jury; this is for the Court.

The Court: It is out of the hearing of the jury and I still haven't heard the nature of the application.

Mr. Brill: Well, I have to lay the foundation for it, Your Honor.

"After Ralph Berger was taken into custody and transported to the Cook County Court House for the reciprocal-witness hearing," and so forth.

Now, the language of Assistant District Attorney Goldstein contained in Exhibit 59 for identification—

The Court: Just a moment. I don't know what is going on over there.

(At this point the proceedings at the bench were discontinued and the following took place within the hearing of [fol. 555] the jurors and the alternate jurors.)

The Court: Juror No. 4, if you have any questions, you can write down anything you want.

Juror No. 4: I have a lot of questions.

The Court: Will you write them all out.

Here (handing paper).

Juror No. 4: I think I should write this outside.

The Court: You may do so, sir. Sit right here (indicat-

ing). Will you put each question on a separate piece of paper. . .

(The following proceedings took place at the bench in the presence of the Court, Mr. McKenna, Mr. Goldstein, and Mr. Brill, but without the hearing of the jurors and the alternate jurors.)

Mr. Brill: And I make it clear that I haven't quoted everything that Mr. Goldstein wrote in this memorandum. I am only quoting so much as to establish the fact that Mr. Berger was in custody and taken in custody at his offices before he was taken to the Court House where he was held in custody as well, held in custody prior to the time when Exhibits 56 and 57 were obtained.

Now, in view of that language and the clear, unequivocal statement that the defendant was in custody, it is my purpose and I request now that Your Honor recall the ruling, the recalled rulings with respect to Exhibits P and Q, Your Honor having stricken them on that recall; and I am asking now that they be recalled so that Your Honor's original rulings may be reinstated to show that there was no authority for taking the defendant Berger into custody, that he was in custody illegally, and that I should be permitted to continue with the offer of proof which I made at [fol. 556] the close of the testimony of Detective Cronin, in which, as I stated to Your Honor, I expected to establish that the defendant Berger was in custody, he was illegally in custody, and any documents obtained from him constitute the fruits of an illegal search and seizure and in violation of his constitutional rights; and I ask that Exhibits 56 and 57 be stricken on that ground.

Mr. McKenna: Now, Your Honor, Mr. Brill has made his record. I think the original ruling on the issue of abandonment should still stand. If Mr. Brill wishes a record on appeal, I think that has been made, Your Honor. I don't think that Mr. Brill should be allowed to reopen the matter with Detective Cronin because an explanation of what happened at Chicago and why Mr. Berger did not

appear in the Grand Jury would be so highly prejudicial to the defendant it could constitute, area for a mistrial, and the People, therefore, are barred from explaining this procedure.

Now, also, on the issue of custody, Mr. Berger was summoned to appear before a Cook County Court on that day in the reciprocal-witness proceeding. This is the explanation of the word "custody." He was served with papers and asked to accompany the detectives to court.

Mr. Brill: There is no proof of that.

Mr. McKenna: You made your record. Let me make ours.

Mr. Brill: The language "in custody" is clear.

Mr. McKenna: He was asked to accompany the police officer.

Mr. Brill: I object to this. There is no proof with respect to that.

Mr. McKenna: There is no proof of yours.

[fol. 557] Mr. Brill: There certainly is. There is evidence of what I am talking about.

The Court: In any event, gentlemen, I am adhering to my initial determination. Your application is denied and you have an exception.

Mr. Brill: You don't mean your initial determination, because, initially, Your Honor admitted P and Q.

The Court: The determination I last made deleting those exhibits from evidence.

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The Court: Let the record show that the Court has received a communication from Juror No. 4, Mr. John W. Bierhorst III, which the Court now will mark Court's Exhibit 27 for identification.

(The Communication referred to was marked Court's Exhibit 27 for identification.)

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The Court: Continue with the testimony.

BOLESŁAW BARANSKY, a witness on behalf of the People, having been previously duly sworn, testified further as follows:

Cross examination.

By Mr. Brill:

Q. Now, Detective Baransky, are you what is known as a wire man?

A. Yes.

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Q. What you really mean is that you installed an eaves-dropping device, isn't that true?

A. One and the same, yes.

[fol. 558] Q. And when you spoke of a microphone that you installed, you were talking about a "bug," isn't that so?

A. Yes.

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Q. Detective Baransky, did you also bug the private office of a lawyer named Harry Neyer at 22 West 48th Street?

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A. I did.

Q. And was it at the address of 22 West 48th Street that you bugged that office?

A. That is correct.

Q. Can you tell us the date on which you bugged that office?

A. Offhand, I don't recall.

Q. Well, do you have a record of it?

A. There is a record of it, yes.

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Q. And supply that date for the record.

A. I will.

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Q. Did you ask Mr. Neyer for permission to bug his office?

Mr. McKenna: Objection, Your Honor, as irrelevant.

The Court: Objection sustained as irrelevant.

Mr. McKenna: I ask for an instruction on this whole line of inquiry.

Mr. Brill: Your Honor is limiting me in such a way as to incapacitate me.

The Court: I am going to strike out counsel's remark as completely unwarranted and I am going to ask the jury to disregard it.

Q. Did you receive Mr. Neyer's permission to bug his office?

[fol. 559] Mr. McKenna: Objection, Your Honor.

The Court: Now, if counsel will indicate to the Court any legal basis for this inquiry, that is, whether lawyers' offices are immune from eavesdropping devices, I would be very happy, sir, to—

Mr. Brill: Yes, sir, I will be glad to do that.

The Court: —reconsider the application.

Mr. Brill: I will be glad to do that.

The Court: And I will state that as of now there is no evidence here in the record of overhearing any conversations from Mr. Neyer's office.

Mr. Brill: No, but there is evidence that Mr. Neyer was brought into this picture, and he was first introduced into it by Mr. McKenna in direct examination of several witnesses.

The Court: Mr. Brill, if at any time during this trial any testimony is elicited with respect to overhearing any conversation from any device planted in Mr. Neyer's office, and if you then want to press an objection, I will listen to it; but I think that this inquiry at the present time is completely out of place.

Mr. Brill: Well, I disagree and I have an exception to Your Honor's ruling.

The Court: You have an exception.

Q. Now, there is no question about the fact, is there, that you bugged the private office of Harry Steinman at 15 East 48th Street; isn't that true?

The Witness: That's true.

By Mr. Brill:

Q. Did you receive his permission to do that?

[fol. 560] Mr. McKenna: Objection.

The Court: Objection sustained.

Now, I am going to give you another opportunity to make an offer of proof out of hearing of the jury.

(Whereupon, the following proceedings were had at the Bench, out of hearing of the jurors and the witness:)

Mr. Brill: Your Honor, I submit that to cut off this line of inquiry Corks serious, prejudicial damage to the defendant, in view of the fact that I am obligated, as I read the cases, to show that the manner in which the proof is obtained was by a trespassatory invasion of a constitutionally protected area.

I believe the cases are clear that an office is a constitutionally protected area and I am satisfied that I have the right then to show that he did not obtain first the permission of Mr. Steinman to place a bug for the purposes of eavesdropping conversation which were had in his offices.

Mr. McKenna: Are you finished, Mr. Brill?

Mr. Brill: I think that I have indicated to the Court enough to indicate the purposes for this line of inquiry, rather than make an extended offer of proof. I don't think your Honor wants an extended offer of proof. The Court has indicated that he does not.

Mr. McKenna: There has been a legal decision that eavesdropping evidence is admissible. Now, Mr. Brill's whole purpose here is prejudicial in trying to do into that. That is not a question for the jury, how it was done. The Court has decided it was legal, then that is all there is to it and I don't think he should be allowed to pursue this line of questioning.

[fol. 561] The Court: I am afraid, Mr. Brill, that this line of inquiry, the only object of this line of inquiry, the only object it could possibly have would be to prejudice the jurors against this type of evidence.

You have already been shown a note written by one of the jurors, Juror Number 4, in which he says that he is now prejudiced against this form of evidence and if he continues acting as a juror he will vote for a verdict of not guilty.

I am not saying that you would not have pursued this line of inquiry, even if this note were not shown to you.

Mr. Brill: And it is not enough to say, either, that he would not vote for a verdict of not guilty without this evidence. There is no indication that he would not.

The Court: However, your concern, I believe, should be with a protection of the record in the event of a conviction in this case and I believe that the record is amply protected from your standpoint by the fact that the Court has ruled on several occasions that this type of evidence is legal, having been secured pursuant to a legally obtained Court order.

Mr. Brill: But, your Honor, I do not have it in the record that there was no permission obtained, that no permission was given.

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The Court: Whether permission is obtained, or not, is immaterial. As a matter of fact, the means by which entry was gained into this area, into these areas, is completely immaterial. I am going to ask you to refrain—

Mr. Brill: I am sorry you indicated that because I regard it as highly important, the manner and the means in [fol. 562] which it was done is highly material, and it goes to the heart of the admissibility of the evidence.

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Mr. Brill: Your Honor, I have a right to show how this installation was made, the conditions and circumstances under which it was made, so that I can demonstrate that anything which they offer as a result of the installation, which they claim came over, is unreliable, untrustworthy, incomplete and it did not meet the kind of standards that would be required in order to justify its consideration for admissibility.

Now, if your Honor cuts me off, as you now indicate you will do, you will here again effectively deny this defendant a fair trial, by reason of the fact that you have seriously, prejudicially, limited him from offering the kind of proof that demonstrates that these tapes are not worthy, or do not reach the standard, because of the omissions on the part of the installer, to warrant their being considered as admissible evidence.

The Court: Now, if your line of inquiry is directed towards cross examining this witness as to the manner in which he actually installed the instrument, so as to establish the fact that there was some defect in the mode of reception, I will permit such an inquiry.

Mr. Brill: Not only that, but Mr. McKenna, as I recall it—I haven't the transcript before me, but I am confident that I can show it to you—developed from this witness on direct examination that it was in the early hours of the morning that he made the installation.

[fol. 563] I have a right in cross examination, the door having been opened to pursue that—and I think that I should not be cut off in that manner—

The Court: And I am directing that no reference to the manner of entry be made. You can make your offer of proof out of hearing of the jury and I will rule on it.

Mr. Brill: Well, firstly, I will, of course, comply with the Court's directions. Under no circumstances would I be contumacious or insolent at any time to your Honor, or any other Judge of any other Court.

The Court: I will state this: If you produce any authority that indicates that you can illustrate by direct or cross examination of any witness the manner in which access to the respective areas was gained, where a Court order was initially obtained by the District Attorney's Office to plant such eavesdropping device, then I will reconsider my determination.

Mr. Brill: Your Honor has read the cases.

The Court: I know of no such law.

Mr. Brill: Your Honor has read the cases and Your Honor knows that decisions of the Supreme Court of the United States have turned to whether or not there was a trespassatory invasion. There is no better way to demonstrate if there was a trespassatory invasion than by establishing the facts as to whether or not there was permission, how the entry was effected, whether or not it was by furtive or secretive methods, and what, if anything, was done in that regard, what concealments, if any, were pursued. All of those demonstrate, and it is unequivocal proof of the nature of the invasion to establish that it is trespassatory, and without the leave to show, one, that it is done secretly, that it was done without the permission [fol. 564] of the person whose private office—a constitutionally protected—was trespassatorily invaded; two, the time of the day or the night concerning which the District Attorney has opened the door.

Here again I am cut off prejudicially, I assure your Honor, to the defendant—the secretiveness, rather than the method of concealment—the concealment of the equipment, and the fact that it was done in such a way as to prevent the person, whose constitutionally protected area was trespassatorily invaded, from ascertaining that there was, in fact, the existence of a bug, which was placed there without his permission, for purposes of transmitting and

recording conversations had in that constitutionally protected area, without the right to establish those, among other things, as to the nature of the invasion, your Honor, cuts off the proof which I believe I have a right to offer and I have stated this in the manner in which I did, and not formally as an offer, although I know your Honor will consider it as such.

The Court: I will, sir.

Mr. Brill: But this is generally the type which I believe I have a right to pursue in order to demonstrate what of necessity must be demonstrable to an Appellate Court in the event that the matter is required to be reviewed.

Mr. McKenna: There was an opportunity to do this at the preliminary hearing. I stated at that time in the preliminary hearing that the eavesdropping devices were installed without the permission of Harry Steinman, so he has a record if he wants to make an appeal on that issue, and I don't think that the methodology has any relevance to this jury and it is designed to prejudice the jury, as your Honor states it.

[fol. 565] The Court: Mr. Brill, let's proceed with the trial.

Mr. Brill: May I just make this statement?

The Court: Yes.

Mr. Brill: If a natural consequence of the answers given by this witness, the jury feels, in the light of your Honor's instructions, that they are unwilling to accept certain testimony that lies within their function and province, your Honor has an obligation to give the legal instruction.

The Court: I will at the proper time.

Mr. Brill: Yes, and the jury then has the right and obligation to follow the instruction and apply the law and reach the determination on the facts.

Now, to say that this juror, only because of a note which he submitted, has now closed his mind and has made up his mind at this posture of the case, is to unfairly damn him as one who has violated his oath, and I say to your Honor that no one has the right to do that.

The Court: Well, that is your impression, not mine, Mr. Brill.

The Court: . . . Nothing that the Court has said will preclude any inquiry on your part with respect to the manner, the technical manner, in which the device was inserted, in order to determine whether or not it was possible to overhear it, or not.

Mr. Brill: I don't know what that means. I have to be able to show, for example, how and where the wires and bug were concealed, the location of it.

The Court: You may do that, sir.

Mr. Brill: In order to be able to show what the circumstances were.

The Court: You may do that, sir, but that is a far cry from attempting to prejudice anyone in this case by show-[fol. 566] ing that, for example, that a door was broken down in order to get in the offices, or that—

The Court: Or that a superintendent's key was obtained surreptitiously.

Mr. Brill: Why shouldn't that be permitted, Judge? This demonstrates that there was no permission.

The Court: Because the record indicates that any entry, if any was made, was pursuant to a Court order.

Let's proceed.

Mr. Brill: But that does not preclude—

The Court: I hold to the contrary.

Mr. Brill: What I want to show affirmatively, and I think I am entitled to show—

The Court: I precluded it, let's end it there, Mr. Brill, please.

Mr. Brill: Could I have a concession there was no concession?

Mr. McKenna: No.

Mr. Goldstein: No concession.

Mr. Brill: All right, can I have a concession?

The Court: In this posture of the record, I now direct that you continue with the cross examination of this witness, without asking for any concession.

Mr. Brill: I am disabled, because I ought to have a concession with respect that in this record—

The Court: Let's proceed.

Mr. Brill: I respectfully except.

The Court: Proceed.

(Whereupon, proceedings were resumed in open Court, as follows:)

[fol. 567] Q. What time was it that you first went to the premises, 15 East 48th Street?

Mr. McKenna: Your Honor, here goes again. I object.

The Court: Objection sustained.

Mr. Brill: Your Honor, he specifically mentioned in his direct examination a general time of day, and I am merely trying to limit it. At Page 1333, in answer to Mr. McKenna's question, "Question:—"

The Court: Having made that statement, as to when he went there what is your question predicated upon?

Mr. Brill: It's predicated upon the question and answer given by the witness at Page 1333.

The question was, "Do you recall when it was that you installed this overhearing device?"

"Answer: It was the early morning hours of June 16th, 1962."

And I want to know—

The Court: Is there any purpose in repeating a question which he's already given on his direct examination?

Mr. Brill: I want to know how early it was, Judge.

The Court: Is that relevant?

Mr. Brill: I think it is.

Mr. McKenna: I see no relevancy to it.

The Court: Objection sustained. I hold it's irrelevant.

By Mr. Brill:

Q. In the early hours of June 16th, 1962, when you went to the building at 15 East 48th Street, did you go to the eighth floor?

A. That's correct.

[fol. 568] Q. Now how did you get to the eighth floor?

Mr. McKenna: Objection, your Honor.

The Court: Sustained, as irrelevant.

Q. Did you use the elevator when you went there, in the early hours of that day?

Mr. McKenna: Objection again, your Honor.

The Court: Sustained.

Q. Did you make certain that nobody saw you enter the private office of Harry Steinman?

Mr. McKenna: I object, your Honor.

The Court: Sustained, as irrelevant.

Mr. McKenna: Your Honor, he's persisting in this line of inquiry, after an instruction from you.

The Court: I recognize that.

Mr. Brill: Well, I don't mean to do anything that your Honor has ordered me to not to do, but I think that this is a little different.

Q. Now when you got inside the private office of Harry Steinman, where did you place the bug that you described?

A. It was placed on the wall, about ten or twelve inches below the edge of the desk.

Q. Now was the bug visible to anyone who looked at it after you placed it there?

Mr. McKenna: Your Honor, visibility has no relevancy to the issue. I object.

The Court: Objection sustained.

Q. Was anything— Did you put anything over it to cover it?

Mr. McKenna: Objection.

The Court: You may answer it, sir.

[fol. 569] A. I did cover it, yes.

Q. What did you cover it with?

A. A cover commonly used by telephone people in telephone installations.

Q. So that the bug itself was concealed. Isn't that true?

A. Yes, it was concealed.

Q. So that persons engaged in conversation in that room would not be aware that their conversations with being transmitted.

Mr. McKenna: Objection, your Honor.

The Court: Sustained as irrelevant.

Q. How many times did you enter the private office of Harry Steinman after that date?

The Court: (To the witness) You may answer, if you did at all.

The Witness: I believe I did.

Q. How many times did you enter the office after the first date?

A. Once.

Q. Do you remember the date on which you did that?

A. No, I don't recall the date.

Q. How many days after the first entry was it?

A. I don't remember the days.

Q. Did you make a record of each of the entries?

A. No.

Q. You made no record of it, either.

A. No.

[fol. 570] The Witness: If I may correct myself?

The Witness: Just the first entry.

Q. But no record of any entries after the first one.

A. That's correct.

Q. Did you not make a record so that no one would know when you entered again—

A. No.

Q. But you made no record so that anyone could ascertain when you entered again. Isn't that true?

A. No.

Q. You say it's not true—after the first entry?

A. I kept no record of going in at any other time.

Q. Right. That's right.

A. I didn't keep a record of it. I wasn't trying to hide anything, no.

Q. And you don't remember when you went in after the first time.

A. No, I don't.

Q. And nobody in the world will ever be able to know that because you have no record of it. Isn't that correct?

Mr. McKenna: Objection, your Honor.

The Court: Sustained. Strike it out.

Q. Didn't you testify on direct examination that after you— Let me withdraw that. No, no. Did you testify on direct examination that after you concealed the bug, you connected it to some "unused" wires that were located within those premises.

A. Yes, I did.

Q. Were those unused wires that you had brought there?

A. No. They already existed there.

Q. They were already there.

A. That's correct.

Q. You found them there.

A. Yes.

[fol. 571] Q. They were telephone wires which had been disconnected?

A. Whether they had ever been connected or disconnected, I don't know. At the time they were disconnected.

Q. At the time they were disconnected.

A. Right.

Q. Now you led those wires out of that room, did you not?

A. They led out of the room, yes.

Q. And where did they lead to?

A. To a closet in a sort of a foyer in this suite of offices.

Q. That would be where the box or the cable box was located, would it not?

A. Yes, there was a box there, yes.

Q. And that would be the telephone company's property maintained there for the purpose of maintaining that service.

Mr. McKenna: Objection, your Honor.

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The Court: Sustained as irrelevant.

Q. Now did you lead wires out of the box after you got into the box?

A. There were other wires existing within that box that led out of there.

Q. And did you connect those to the wires which you had connected to the bug?

A. Yes, I did.

Q. And where did they lead to?

A. To the hallway on the eighth floor.

Q. And did those wires lead from the hallway on the eighth floor some place else?

A. They did.

Q. Where did they lead to?

A. To the basement of the same building.

Q. And did you follow those wires to the basement?

A. I couldn't follow them visually. I found them in the basement, yes.

Q. Is that where you connected the recording device for eavesdropping purposes, that you've described?

A. No.

[fol. 572] Q. Oh, did you lead those wires out of the basement?

A. Yes, I did.

Q. And did you connect them to unused wires that you brought?

• • • • •

A. No.

Q. Out of the basement?

A. They were unused wires existing already out of the basement.

Q. When you say "unused", you mean not in service.

A. That's correct.

Q. All right. Now did you connect those wires from the basement and lead them out to some other place?

• • • • •

A. Yes.

Q. Where did you lead them to?

A. Another building.

Q. What's the location of it?

• • • • •

A. 5 East 48th Street.

The Court: And was that in the basement of those premises?

The Witness: That's correct.

• • • • •

By Mr. Brill:

Q. And was it in the basement of those premises to which you led those wires that you connected the tape recorder that you described to us in your direct examination?

A. That's correct.

Q. Are you aware, Detective Baransky, that there are external influences which affect the transmission and reception of conversation?

• • • • •

A. Yes, I am aware of it.

[fol. 573] Q. Would, for example, a building such as 15 East 48th Street contain materials which might or would have an effect upon the transmission and reception of conversation?

• • • • •

A. I don't know the building that well.

Q. You don't know it that well. Do you know whether or not the building has structural aspects in it of iron or steel?

A. Yes, I do.

Q. And would your answer be the same with respect to steel or iron structural aspects of the building at 5 East 48th Street?

A. I don't see how that would affect it.

Q. You don't know.

A. No.

Q. Do you know whether there was steel structural aspects in the building at 5 East 48th Street?

A. I believe so.

Q. Now is it not true that such structural aspects affect the transmission and reception of conversation?

A. No, not in my opinion.

Q. Not in your experience.

A. No.

Q. You differ or have another opinion than those who say it does, do you?

Mr. McKenna: Your Honor, I object.

The Court: Sustained.

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By Mr. Brill:

Q. The concealed bug in Mr. Steinman's private office was for the transmission of conversations from that office, wasn't it?

A. That's correct.

Q. By the way, how large is that office?

A. It's hard to say. I don't recall the exact size of it.

Q. Well, approximately how big was it?

A. Twelve by fifteen, twelve by twenty. It was—

[fol. 574] Q. How many windows in it?

A. I have no idea.

Q. Did you make any record of the size or the number of windows in it?

A. No.

Q. Did you observe whether or not there were air conditioners in that office?

A. I don't recollect that there was an air conditioner in there.

Q. Do you recollect that there was not one there?

A. No, I do not.

Q. Well, let me ask you this: Would an air conditioner in operation affect the transmission of sound from that room?

Mr. McKenna: Your Honor, I don't think he's laid the foundation. I object.

The Court: Sustained.

Mr. Brill: He's an expert, Judge.

The Court: Sustained.

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Q. You were trained as a wire man, weren't you?

A. That's correct.

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Q. And you've been doing it, and have been doing it for six years up to the time that you planted this bug which you concealed in Mr. Steinman's office. Isn't that right?

A. That's correct.

Q. All right. Now were you aware at that time that the operation of an air conditioner might affect the power surge so as to affect the transmission and the reception of conversation from the office where the bug was concealed?

Mr. McKenna: Your Honor, there's been no showing there was an air conditioner. That's the basis for my objection.

The Court: And I sustain the objection.

[fol. 575] Mr. Brill: I am asking it apart from whether there was one. I want to know whether he knows if one could affect the transmission.

Mr. McKenna: It has no relevancy.

The Court: And I sustain the objection.

Q. Do you say now there was not an air conditioner in that office?

A. I can't say whether there was or wasn't.

Q. Did you make a record of what you found in that office?

A. No.

Q. None at all.

A. No.

Q. Right. All right. At the time when you installed the bug, did you check on the operation of the elevator?

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A. I do not know whether the elevator was operable or not.

Q. Do you know how many elevators there are in that building?

A. No, I do not.

Q. Do you know that the elevators in that building are electrically operated?

A. I don't know.

Q. You don't know. Did you check to find out whether or not they were before you made, before you planted the concealed bug in Mr. Steinman's office?

A. No, I didn't.

Q. You didn't. Were you not aware then that the number of times which an elevator goes up and down in a building has an effect upon the power surge and an impact upon the transmission and reception of conversation which is sought to be transmitted from a private office like that?

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The Witness: I don't know what effect a power surge would have on it. The noise of the, the noise of the elevator, if it is loud enough to enter the room and it is loud enough within the room for the microphone to pick it up, it would have an effect on the microphone, yes, the noise.

[fol. 576] Q. Are you saying that the power surge makes no difference by reason of the elevators going up and down with respect to the reception and transmission?

A. The power surge, as I understand it, has something to do with the electricity. Is that what you are trying to bring out?

Q. You understand it, don't you?

A. Then I have to answer that the power surge has nothing to do with the microphone.

Q. Nothing to do with it?

A. Unless the noise from the elevators enters the room and is picked up by the bug; is that what you are saying?

Q. That is correct. There are elevators in the building at 5 East 48th Street?

A. I believe there are.

Q. Did you check in either of the buildings for the number of times that the elevators normally went up and down each day?

A. No, I did not.

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Q. Did you ascertain whether there were any compressors in either building?

A. I did not.

Q. Well, don't you know that the operation of compressors may affect the transmission and reception of conversation?

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A. If, again, the compressor makes that much noise that it enters the room, it would affect the transmission of voice over that microphone, yes.

The Court: Would that be equally applicable to any object, electrical or otherwise, which might create a noise which might enter that room?

The Witness: That is correct, Your Honor.

Q. How is the bug powered?

A. In this particular case, it was powered by an ordinary little six-volt storage battery.

[fol. 577] Q. Now, did you check that battery before you installed and concealed the bug?

A. Yes.

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Q. Now, on what date did you check it next after June 16?

A. I don't recall.

Q. How many days after June 16?

A. I have no recollection.

Q. How many times did you check it after June 16?

A. No idea.

Q. I think you told us you only went in once after June 16, is that right?

A. That is correct.

Q. And did you tell us that it was only a couple of days after you first installed and concealed the bug?

A. A couple of days after concealing the bug?

Q. Yes.

A. I established a listening post. I did not go into the premises of Harry Steinman.

Q. Well, I am trying to find out when you next went into the premises of Harry Steinman, the private office of Harry Steinman.

A. I don't recall the exact date.

Q. You have no idea of that, have you?

A. No.

Q. All right. Now, Detective Baransky, is it true that a defective battery powering a concealed bug would affect the transmission and reception of conversations in a room where it was planted?

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Q. You have no way of knowing and no way of telling this jury with any certainty whether or not that battery was defective at any time after you first planted it?

A. Yes, I have.

Q. When did you next enter to ascertain?

A. I never entered the premises of Harry Steinman to ascertain whether the battery was operating or not.

Q. I see. You would then base your estimate or answer upon what was received than what was transmitted, isn't that true?

A. No.

[fol. 578] Q. From your experience, Detective Baransky, can you tell us what happens with respect to reception when a car, for example, crosses or passes under a power line?

A. I have no idea what happens to the power line.

Q. I didn't ask you about the power line.

The Court: He is asking about its effect on reception, if you know, sir.

The Witness: I don't know.

Q. Do you own a car?

A. Yes, I do.

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Q. Did you ever drive one with the radio on?

A. Yes.

Q. And did you pass under a cable while you were so driving with the radio on?

A. Yes.

Q. What happened to your reception?

A. I got an interference.

Q. And what else would you get sometimes?

A. Static.

Q. Pardon?

A. Static.

Q. That is interference, isn't it?

A. Yes.

Q. What else?

A. Nothing else that I recall.

Q. Don't you get a blank sometimes, too?

A. A blank?

Q. Yes, blank, a drift; isn't that what you call—

A. Yes, you get a blank.

Q. A gap?

A. A gap, yes.

Q. Isn't that it? And isn't the same thing true when you drive under a bridge or through a tunnel?

A. That is correct.

Q. So you get an interference by reason of an external influence?

A. That is correct.

Q. That happens also when you are driving on a bridge where there are steel girders?

A. Yes, I believe so.

Q. Is that an interference with—I withdraw that. Did you make any check at all to find out what conditions of power surge might affect the transmission and reception [fol. 579] from the bug that you concealed in Mr. Steinman's room?

A. I don't see how a power surge would affect—

Q. Did you make any check as to the conditions, yes or no?

A: No.

Q. Now, did you make a test for reception at the time that you concealed the bug?

A. Yes, I did.

Q. What kind of a test did you make?

A. At the time of installing it, the bug was operable up into the basement of the premise. I had a detective stand in front of the bug and speak in a normal voice. I was in the basement listening to his conversation.

Q. Now, do you know whether he moved from the bug at any time?

A. I couldn't tell.

Q. Well, isn't it true that the distance from the bug affects the transmission?

A. Yes.

Q. And if there are two or more people who move from the bug, there is a difference or a change in transmission?

A. Yes, there is.

Q. Incidentally, you didn't test the reception from the premises at 5 East 48th Street, did you?

A. Not that night.

Q. Did you test it on a subsequent occasion?

A. When I hooked up the tape recorder, yes.

Q. That was a couple of days after the 16th?

A. That's correct.

Q. And that is the second time you had access to the private offices of Harry Steinman, is that right?

A. No, sir.

Q. Did anybody enter with you or to your knowledge on the day that you hooked up the tape recorder the premises where you concealed the bug in Harry Steinman's private office that same day?

A. No.

Q. When did you make the test for reception after you hooked up the tape recorder?

A. When I finally connected the tape recorder and hooked up the battery to make the microphone operable, I

tested it for volume, clarity, and the recording, whether [fol. 580] the tape recorder was capable of (recording it well enough so that we could hear it back well enough.

Q. And that is what you said happened a couple of days after the 16th, isn't that right?

A. That is correct.

Q. And that was the second time, then, that you entered the premises?

A. Which premises?

Q. 15 East 48th Street, the private office of Harry Steinman, where you concealed the bug.

A. I did not.

Q. You didn't. Did someone, to your knowledge, enter at that time so that you could make the test?

A. No.

Q. So that you did not actually make a test of transmission and reception on the day when you hooked up the tape recorder, isn't that true, and isn't that what you just told us?

A. That is true.

Q. All right. What time of the day was it that you hooked up the tape recorder?

A. Oh, I would say it was after noon.

Q. Did you make a check to ascertain what impact there was by reason of power surges following the operation of elevators or air conditioners or compressors at that time? Yes or no.

A. I can't answer that with a yes or no.

Q. All right. Answer it your own way, then.

A. At the time that the microphone was tested by me, I had no way of knowing whether the elevators were running, standing still, whether compressors were going, no.

Q. That was on the 16th that you did that, right?

A. That was on the 18th.

Q. Of June?

A. Right.

Q. This is the second time you were in there?

A. I did not enter the premises 15 East 48th Street on June 18, Steinman's office.

Q. What is drift, Detective Baransky?

A. If the drift you are referring to is to transmission of [fol. 581] electronic waves, where a transmitter starts to transmit and then the electronic waves drift off to a different frequency, that is what I understand is drift.

Q. I see. Have you ever heard it as an expert said that a drift in transmission is a blank spot or a gap?

The Witness: Yes.

Q. All right. Now, at the time that you made the installation after having concealed the bug, did you make corrections for drift?

The Witness: No.

Q. And isn't it a fact that where you have drift or fade-out or a gap, that nothing, that there is nothing audible on the receiver, the tape recorder?

A. I imagine so.

Q. You couldn't say that for sure, could you?

A. No, I couldn't say it for sure.

Q. But where there is a blank space or gap in the transmission, can you hear anything at the other end?

A. I imagine you can hear something.

Q. Can you hear conversation?

A. I don't know.

Q. You don't know. Isn't it true that, where you have such a condition and where there has been conversation which is not transmitted by reason of that gap, that the reception is blank on the tape?

A. Blank spaces on the tape?

Q. Yes.

A. Yes.

Q. And can you say that, with respect to the installation that you made, that that didn't happen to the tapes that were used on that tape recorder?

A. I couldn't say.

[fol. 582] Q. You couldn't say. Now, isn't it also true that street noises affect transmission and reception where there is a concealed bug such as you describe?

A. Again, if the noises are loud enough to enter that room.

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Q. And you can't say whether or not there were noises, street noises, that entered or didn't enter that room, can you?

A. I can't say.

Q. You don't know anything about that. Now, I think you told us that, as people move away from the mike, the bug, that there is an effect upon the transmission of the conversation that is being had at the time; isn't that true?

A. That is true.

Q. And you get blank or inaudible spaces where that happens?

A. If the voices drop low enough so the microphone is not capable of picking them up, you will get a blank space.

Q. Now, is there also a difference between direct sound and reflected sound?

A. A difference?

Q. Yes.

A. I imagine there is.

Q. Well, now, you say "imagine." Do you mean that you are just guessing about it or do you as an expert know?

A. I don't know.

Q. You don't know. Well, let's see. Do you know that the conversation that passes between you and me, for example, is at one sound level? Are you aware of that?

A. As you raise and lower your voice, it comes at different sound levels.

Q. But, now, when you address yourself to the Clerk and what you say bounces off the people at the defense table and comes to me, does that make or have a difference in audibility?

A. Audibility?

Q. Yes.

A. The volume may drop a bit, yes.

Q. And you would get blank spaces again, perhaps, would you not?

A. Again, if the voice dropped low enough.

[fol. 583] Q. And you would even get drifts or fade-outs on the tape?

A. Yes.

Q. Or on the earphones, if you were using them, isn't that true?

A. Yes.

Q. Do you know—and that can all happen in the same room, can't it?

A. Certainly.

Q. And do you know that in a room where conversations are had that the human ear can pick up a conversation that may not be picked up on a transmitter and transmitted to the receiver?

A. Are you referring to the microphone as a transmitter?

Q. Isn't it a transmitter?

A. In a sense of the word, but it is not an electronic transmitter.

Q. Is the microphone that you concealed, that bug, is that not the transmitter that was used in the setup that you installed?

A. The microphone transmitted the voice through the wire directly to the tape recorder.

Q. That is what I am talking about, that is the transmitter, that is what I am referring to?

A. Yes, it is a transmitter.

Q. You understood that throughout, did you not?

A. Yes.

Q. All right, so that when I use the word "transmit", we were talking about, and you understood that we were talking about, the bug that you concealed in Steinman's private office; isn't that so?

A. I was under the impression that you were talking about an electronic transmitter that transmits waves through the area.

Q. No, I am talking about—so we get it clear—I am talking about the bug that you planted as the transmitter?

A. The bug I planted was an ordinary microphone.

Q. All right, that is a transmitter, that is how the sound, the conversation, was transmitted; isn't that right?

A. It picks up the conversation, it picks up the sound.

Q. Yes, and it transmits it?

A. Through the wires.

[fol. 584] Q. All right, is it not then for the purposes of our definition the transmitter in the setup that you installed?

A. Yes.

Q. So that none of the answers which you have heretofore made would be changed by reason of our having used the word "transmit"; isn't that true?

A. That is true.

Q. All right.

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[fol. 590] Redirect examination.

By Mr. McKenna:

Q. Detective Baransky, was it clear in your mind what Mr. Brill was referring to when he called the microphone a transmitter?

A. I had it confused with something else, yes.

Q. Isn't it true that there are two types of sound transmission, just answer yes or no?

A. Yes.

Q. One of those is radio, wireless?

A. That is correct.

Q. And the second is over wires, as in the case of a telephone?

A. That is correct.

Q. What was the type of sound transmission that was employed in the eavesdropping device in Harry Steinman's office?

A. Over wires.

Q. And that is akin to a telephone, is it not?

A. That's right.

Q. Now, electronic interference due to a power surge originating in an elevator affect telephonic or wire sound transmission?

Mr. Brill: That is objected to.

The Court: Overruled, you may answer.

Mr. Brill: He is talking about another kind of interference, your Honor.

The Court: You may answer, sir.

The Witness: No.

Q. Do these—do steel beams and girders in a building interfere with sound transmission over wires?

A. No.

[fol. 591] Q. Is there such a thing as drift with sound transmission over wires?

A. A certain amount.

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Q. Would the drift of sound transmission over wires affect in a significant way the sound transmitted over those wires?

Mr. Brill: That is objected to, if your Honor please.

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The Court: You may answer it, overruled.

The Witness: Not to any great extent.

Q. And just for the purposes of clarity, where was the battery that was used to activate the microphone over which the sound was transmitted?

A. It was located within the same room with the tape recorder at the listening post.

Q. It was not in the office of Harry Steinman, was it?

A. That's right, it wasn't.

Q. Would the interference due to electricity generated over power lines effect sound transmitted over wires, as was employed in this case?

Mr. Brill: That is objected to.

The Court: Overruled, you may answer it, sir.

The Witness: Only if there is, if this electricity set up a radio frequency, then there would be a certain amount of hum, noise.

Q. Would it cause blank spots in the sound transmission over wires?

Mr. Brill: Objected to.

The Court: Overruled.

The Witness: Not that I know of.

[fol. 592] Q. So that if there was interference of the type Mr. Brill referred to coming from power lines it would be reflected in a hum?

A. That's right.

Q. Will you please put it for us in a few words, the method whereby the sound was transmitted over the eaves-dropping device in the office of Harry Steinman?

A. I can put it this way: If you were to take a telephone off the hook and speak to someone, and then momentarily lay that telephone down on the table, the party at the other end could hear people within that room making noises or sounds.

Mr. Brill: Move to strike it, your Honor.

The Court: I'll allow it to stand.